THE FINANCIAL COLLAPSE OF ENRON—Part 2

HEARING

BEFORE THE

SUBCOMMITTEE ON
OVERSIGHT AND INVESTIGATIONS

OF THE

COMMITTEE ON ENERGY AND
COMMERCE

HOUSE OF REPRESENTATIVES

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THE FINANCIAL COLLAPSE OF ENRON—Part 2

THURSDAY, FEBRUARY 7, 2002

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ENERGY AND COMMERCE,
SUBCOMMITTEE ON OVERSIGHT AND INVESTIGATIONS,
Washington, DC.

The subcommittee met, pursuant to notice, at 10 a.m., in room 2322, Rayburn House Office Building, James C. Greenwood (chairman) presiding.

Members present: Representatives Greenwood, Bilirakis, Stearns, Gillmore, Largent, Burr, Bass, Tauzin (ex officio), Deutsch, Stupak, Strickland, DeGette, John, Rush, and Dingell (ex officio).

Also present: Representatives Green, Markey, McCarthy, Waxman, and Jackson Lee.

Staff present: Mark Paoletta, majority counsel; Tom DiLenge, majority counsel; Michael Geffroy, majority counsel; Casey Hemard, majority counsel; Jennifer Safavian, majority counsel; Shannon Vildostegui, majority counsel; David Cavicke, majority counsel; Brian McCullough, majority professional staff; Brendan Williams, legislative clerk; William Carty, legislative clerk; Peter Kielty, legislative clerk; Jonathan Cordone, minority counsel; Edith Holleman, minority counsel; Chris Knauer, minority investigator; Courtney Johnson, research assistant; and Jessica McNiece, staff assistant.

Mr. GREENWOOD. Good morning. This hearing of the Oversight and Investigations Subcommittee of the House Energy and Commerce Committee will come to order, and the Chair recognizes himself for the purposes of an opening statement.

The hearing this morning will be a painful one. We have met to continue our investigation into the collapse of the Enron Corporation. And as our investigations show and as was borne out by Dean Powers' testimony 2 days ago, a number of our witnesses today who are members of the corporate leadership team at Enron who must bear the greatest weight for its collapse.

Four of the witnesses here today will appear only briefly. Mr. Fastow, Kopper, Causey and Buy will all seek the protection against the danger of self-incrimination guaranteed by the Constitution to every citizen in the Bill of Rights. The duty of this subcommittee is to investigate the facts of the matter surrounding the collapse of Enron to determine what went so horribly wrong that the Nation's seventh largest corporation had to seek protection from its creditors by filing for bankruptcy.

And once we have established those facts, we have an obligation to determine how our financial laws and regulations can be improved so that in the future publicly traded companies faithfully and completely report their financial actions and their true financial health. This is the only way to ensure that our investor confidence is restored and that future investors will not suffer the fate that many thousands who watched with horror as the work of a lifetime was swallowed up and their life savings disappeared.

The facts uncovered to date seem clear enough. Two days ago, we heard extensive and informative testimony from William Powers, Dean of the University of Texas School of Law and chairman of the Special Investigative Committee of Enron's Board of Directors, who joined the board this past October solely to investigate the transactions between Enron and various partnerships. Our own investigations into these transactions, along with Dean Powers' illuminating report, carefully detail the complex workings of these related party entities, as they were called.

As the workings of these entities and associated schemes, such as Chewco, LJM1, LJM2, the Raptor transactions, and JEDI, become clearer, they also become more disturbing. In Dean Powers' words, "What we have found is nothing short of appalling." Mr. Fastow, aided by a number of those witnesses subpoenaed here today, shared in huge fees totaling tens of millions of dollars to arrange and participate in bizarre transactions that were, at the least, imprudent; at worst, contrary to the very interests of the company, shareholders and investors they were duty bound to serve, apparently plundering millions at the expense of the company and its shareholders.

In furthering these transactions, we have also learned they failed to follow the most basic rules of accounting. They also failed to adhere to any of the business tenets designed to avoid conflicts of interest. In putting numerous deals together, Mr. Fastow and his subordinates managed apparently to represent both sides to a transaction. The Powers report and the Dean's personal testimony on Tuesday could not have been any clearer or more firm in conclusion that these transactions were not designed to improve Enron's economic health; on the contrary, these deals magnified Enron's risks, hastening the day of collapse.

Sadly, it is increasingly clear that this collapse was not brought about by the isolated acts of rogue employees. A disaster of this magnitude requires the complicity of far more than a few bad apples. From senior managers to corporate directors, to outside counsel and accountants, almost no one who had the power to sound the alarm, correct the situation or prevent this debacle did so.

As I stated earlier, four of the individuals who are the center of these schemes will not testify today: Andrew Fastow, who was Enron's former chief financial officer; Michael Kopper, who was the former managing director of Enron Global Finance. While both of these individuals have provided some documents to committee investigators, they have refused to be interviewed or provide all of the documents in their possession. They also have refused to come before us this morning voluntarily. They have come here under subpoena.

Rick Causey was Enron's chief accounting officer, and Rick Buy was Enron's chief risk officer. We received word yesterday that neither of these individuals will testify today. Fortunately, committee investigators have had the opportunity to interview both Mr. Causey and Mr. Buy about these matters over the last month.

But reluctant witnesses will not keep us from getting at the truth. Again, the facts, our investigation and Dean Powers' report appear to confirm that Mr. Fastow essentially masterminded the transformation of this company into the derivatives trading giant it was. He devised the transactions that were ostensibly aimed at moving volatile holdings off Enron's books—deals we understand now to have been fraudulent.

Mr. Kopper served as his chief lieutenant. He became the general partner of Chewco, whose mysterious dealings accounted for the single largest portion of Enron's financial restatements last November. Mr. Kopper also served as a general manager of Mr. Fastow's two LJM partnerships.

Even without the testimony of Fastow, Kopper, Causey and Buy, we will still be able to get some important answers today. To this end, other witnesses today will include Enron officials who had dealings with Fastow and Kopper and who attempted to alert others in Enron's senior management about the danger these deals represented to the company. We will also hear from Tom Bauer, the Andersen audit partner who worked on the Chewco transactions, who is expected to describe what Enron did and did not disclose about this highly troubling transaction.

Our last panel is comprised of senior Enron officers and directors who approved these partnerships and transactions and were responsible for ensuring the fairness and appropriateness of the transactions in question. Their role in this, for good or ill, also needs to be established, and we want to give them the opportunity to speak for themselves.

We will hear much talk today of such things as derivatives, the practice of hedging and why certain transactions go on the books and others remain undisclosed. We will also learn more than any congressional committee to date on the murkiest of dealings Enron operatives engaged in. We have before Congress, for the first time, a collection of the senior Enron players who knew why decisions were made, why the company chose to pursue this ill-fated course, what the company knew about the risks involved and why they chose to act and not act the way they did. What we learn today I am confident will help this committee continue to construct a full and accurate picture for the public of what happened to cause this financial, personal and corporate tragedy.

One final note: Like many Americans, I have tried to keep some perspective on this whole tawdry affair and to provide some perspective as well, but the truth is that this story of financial collapse and betrayal is of epic proportions. It is almost biblical in scope, so perhaps we need to look beyond all the greedy details of avarice and appetite to a larger lesson that all of us can share. In the 11th Chapter of the Book of Proverbs, the authors offer these prophetic words: "He that troubleth his own house will inherit the wind. And the fool will be a servant to the wise in heart." Perhaps that is the true lesson of Enron's failure.

I now recognize the ranking member of this subcommittee, Mr. Deutsch, the gentleman from Florida, for an opening statement.

Mr. DEUTSCH. Thank you, Mr. Chairman. You know, our work here, I think all of us at this point have a sense, is much more important than really the specifics of this transaction, because we have benefited, everyone in this room, everyone in this country, everyone in the world, from a system of transparency in capital markets that has really gained incalculable results. And I think what we have learned, and we know more than we did a week ago, 2 weeks ago, is that Enron—the system failed, Enron failed, but the system also failed, because stockholders, the public did not know what was going on in the company, and the statements did not fairly represent what the company was doing. And it is absolutely certain that that was done with intent.

We have had a number of staff, maybe up to 20 staff people, trying to unravel Enron, and obviously SEC is working on this as well as the Justice Department. And we had a members meeting with staff yesterday evening where we were briefed, and one of the things that I asked the staff—apparently there are about 4,000 partnerships. I am sure many of the people here could know the exact number, but there were 4,000 partnerships that Enron did. And I asked the staff to try to explain one of them to us of the 4,000, that maybe we can understand one and just understand what was there. So I am going to try—and I asked them for a relatively easy one, maybe the easiest.

This is what they have described as maybe the easiest one. It is the LJM Rhythms transaction structure, and it started out as a normal transaction. Enron made an investment, an IPO, with Rhythms Net, an initial investment of $10 million. That investment then grew to a value of about $400 million Enron had a lockout provision in the IPO that they could not sell the stock, so Enron had a reason to try to lock in the stock price. That is a legitimate business transaction, so they were attempting to buy a put at the strike price. But as opposed to going to Goldman Sachs, what Enron did, and Mr. Fastow, what you did, is you set up LJM Limited Partnership to sell the put to Enron. And what happened was Enron capitalized LJM Partnerships with a value of about $200 million of Enron stock. As soon as that occurred, Mr. Fastow, who won't testify today, took a $30 million management fee as a general partner of LJM Partnership. At the same time, he was the chief financial officer or as part of the management of Enron.

Now, what happened was, actually that partnership then set up a subsidiary which sold the put to Enron, but what happened to the stock value is it kept going down, and as it was going down, Enron kept putting stock into the general partnership. Why we believe this is illegal is that as opposed to buying a derivative from Goldman Sachs where it would be an arms-length transaction and the risk would be borne by Goldman Sachs and they would have a true fee between them, there was no risk for the partnership, because it was guaranteed by Enron stock. And so the $400 million in gain that was attempted to be locked in, that stayed on the books of Enron so anyone who wanted to try to understand what was going on in Enron would look at the books and see a $400 million gain, but, effectively, there was no gain.

I mean this is a scam. This is one of 4,000 scams. It is one of the simpler scams, but, again, our understanding is it wasn't just smart, it wasn't just around the edges, it was in fact fraud, it was a criminal violation, and I think what we are learning as we learn more and more, and hopefully Enron is the exception in America, that the case of Enron—and I hope someone is going to try to defend this today, because I think I want to understand maybe there is another story that we haven't heard from our staff, maybe there is another explanation which we don't understand—but hopefully Enron is in fact the exception in corporate America, that the corporation that is doing this is not living on the edge, looking for the gray area but engaging in illegal activity, is engaged in fraudulent transaction.

And one analogy that I have mentioned at at least one other hearing that I will mention again today, I keep reminding myself of the scene in the Godfather movie where Tom Hogan, who is the attorney for the Godfather, had a meeting with the Godfather, and the Godfather tells him, "Just remember, you can always steal more with a briefcase than with a gun." And I think what we have here is a case where literally about $4 billion was stolen from people, and it was stolen, unfortunately, from people, from real people, thousands of whom are suffering.

And, again, I have read biographies of half the people on the panel who are going to testify and not testify today, and I am sure you are going to have to live with yourselves regardless of the consequences of what happens with all these investigations, but I will tell you on a personal basis, as I look at this, is that I hope you, in the dark night of your own souls, think about some of the people who in fact, throughout the country but particularly in the area of Texas, who literally lost their entire life savings and whose lives, effectively, in ways destroyed because of your actions. Thank you, Mr. Chairman.

Mr. GREENWOOD. The Chair thanks the gentleman and recognizes the chairman of the full committee, the gentleman from Louisiana, Mr. Tauzin.

Chairman TAUZIN. Thank you, Chairman Greenwood. Once again, let me express my gratitude to you, Jim, and to you, Peter, for the extraordinary way in which the subcommittee had conducted its business and has gone about this investigation. And I would be remiss if I did not once again thank my good friend, Mr. Dingell, the ranking member of our committee, for the, again, extraordinary cooperation we are getting on both sides of the aisle in this investigation. Other committees may be proceeding in a partisan, political manner at looking at this matter. I hope Americans recognize the extraordinary way the Democrat and Republican investigative team and this committee and our members are working together to try to get to truth here. And I thank you again, Mr. Dingell, for that cooperation and that effort.

Mr. DINGELL. Thank you, Mr. Chairman.

Chairman TAUZIN. We are getting close to the bottom of this collapse and this mess, and I believe the solid progress this week will help us tremendously, as we determine not only what happened but what we in turn can do to assure that something like this doesn't happen again. We look forward this morning, of course, to

the second portion of our hearing into the fraudulent transactions that brought this corporation down.

This past Tuesday, we heard a devastating report from the inside of the corporation, from the chairman of Enron's own investigative committee. This report outlined the extraordinary story of self-dealing, of deception, of bogus statements, or irresponsible management and indeed, I believe, outright fraud. And I say outlined, because Dean Powers in his report did not have the ability, as the committee does, to compel the production of documents or testimony, and it was limited in scope. But it certainly reinforced the very troubling information we have been unearthing in this investigation.

I think it is epitomized by one little line in the first memo that one of our witnesses, Jordan Mintz, wrote on January 4, and I quote, ''Nicole has advised that if there is a general theme or guideline to follow in the preparation process of all these deals, it is to be as innocuous as possible in terms of description, detail, et cetera.''

Despite all the complicated dealings and cross-dealings and self-dealing we are learning about, I still believe what we have before us is a simple story. It is a simple story of old-fashioned theft and explicable acts—inexplicable acts that allowed the perps to get away and to destroy the company. We know that the senior Enron employees who controlled these transactions, Chewco, LJM1 and LJM2, the Raptors and so many others, participated in self-enrichment schemes at the expense of the company and the shareholders and its own employees.

And yet these schemes could have been stopped with proper oversight by certain senior executives, a few of whom are with us today. Absent their taking action, matters could have been put right by Enron directors who were ultimately responsible for the health of the company and the interests of the shareholders, but that didn't happen. They allowed the CFO to work both sides of the negotiating table. They enabled him to participate in his own risky, high-return transactions but effectively insulated him from the risk. This assured his ability to take away tens of millions of dollars and ensure that Enron would be on even shakier ground as it ensured more risk and riskier proposals.

They allowed sweetheart deals, literally, as we have recently discovered, to take place among senior employees, and they allowed a fraud to be perpetrated on the shareholders. And they told shareholders the company was making money that it was actually losing so the stock price would remain high, so senior officers could sell off their shares and make millions while the vast majority of the workers would be left holding empty pocketbooks. To be sure, the accountants and legal advisors assisted, wittingly or unwittingly, or in the sham transactions. And we will have the opportunity to see how we might resolve some of those perverse incentives that allowed that to happen.

This morning, however, we have the opportunity to question several of the principals who could have prevented this collapse. They have a lot to answer for. We also have a couple of senior officers who attempted to alert those charged with policing those deals to no avail. That is a good story. We will hear from some good officers

in the company who smelled the cancer growing inside and tried to do something about it. We will be able to explore today why they failed.

For example, we will have before us Jordan Mintz, the current general counsel for Enron Global Development. He attempted to get then Enron President and CEO Jeff Skilling to sign deal approval sheets, as was required, but he couldn't get Mr. Skilling to sign them. We are going to ask Mr. Skilling today about that. We will find out why those sheets were not signed, why they were signed by everybody else but him. We will have Enron board members, and we can ask them about the oversight of these transactions. And, finally, we have the former CFO, Andrew Fastow, and former managing director of Enron Global Finance, Michael Kopper, who anyway you look at it stood at the very center of the schemes.

Now, they may take the Fifth Amendment today, and they have the right to do so, and we certainly respect that, but as the chairman said, we have other means of getting to the bottom of this thing. Our investigators are doing that. We are doing it in a deliberative, bipartisan way, and we are going to make it available to the American public as we try to not only unravel what went wrong here, but try to make sure again that it doesn't happen again to any other American company, its employees or to those who believe in the system by which investors can trust information upon which they make the judgments when buying and selling stock in this country. We have got a big job to do, today is a big step.

Mr. Chairman, again, I want to thank you for the diligent, extraordinary work you and your minority members are doing for the full committee. And, again, I want to thank Mr. Dingell for his extraordinary cooperation. Thank you.

[The prepared statement of Hon. W.J. "Billy" Tauzin follows:]

PREPARED STATEMENT OF HON. W.J. "BILLY" TAUZIN, CHAIRMAN, COMMITTEE ON ENERGY AND COMMERCE

Thank you Chairman Greenwood. And, once again, allow me to express my gratitude to you, the ranking member, Mr. Deutsch and my friend, Mr. Dingell, the ranking member of the full Committee, for all your cooperation and effort these past two months: The hard work of the staff, on both sides of the aisle, is paying off.

We are getting close to the bottom of the Enron collapse and, I believe, our solid progress this week will help us tremendously as we determine what happened, and as we then turn to what we can do to assure something like this doesn't happen again.

I look forward, this morning, to this second portion of our hearing into the fraudulent transactions that brought this corporation down. This past Tuesday we heard a devastating report from the chairman of Enron's own investigative committee. This report outlined an extraordinary story of self-dealing, deception, bogus statements, irresponsible management and, indeed, outright fraud.

I say outlined because Dean Powers' report did not have the ability, as this Committee does, to compel the production of documents or testimony, and it was limited in scope. But it certainly reinforced the very troubling information we've been unearthing in our own investigation.

Despite all the complicated dealings and cross-dealing, and self-dealing, we are learning, I believe, that what we have before us is a story of simple, old-fashioned theft—and the inexplicable acts, or lack thereof, that allowed the crooks to get away and to destroy a company.

We know now that senior Enron employees who controlled these transactions—Chewco, LJM1, and LJM2, the Raptors, and so many others—participated in self-enrichment schemes at the expense of the company and its shareholders. Yet these

schemes could have been stopped with proper oversight by certain senior executives, a few of whom are before us today. Absent their taking action, matters could have been put right by the Enron directors, who were ultimately responsible for the health of the company, and the interests of the shareholders.

But they didn't step up. They allowed the CFO to work both sides of the negotiating table. They enabled him to participate in his own risky, high-return transactions, but effectively insulated him from the risks. This assured his ability to take away tens of millions of dollars, and ensured that Enron would be on ever more shaky ground as it insured these risks.

They allowed sweetheart deals—literally, as we've recently discovered—to take place among senior employees. And they allowed a fraud to be perpetrated on the shareholders. They told shareholders the company was making money that it was actually losing so the stock price would remain high, so the senior insiders could continue to make off with their millions, while the vast majority of workers would be left holding empty bankbooks.

To be sure, the accountants and legal advisors assisted, wittingly and unwittingly, in the sham transactions. We'll have opportunity to see how we might resolve the perverse incentives that allowed this to happen as our investigation continues. (Our Full committee hearing yesterday certainly helped to shine an informed light on some of the questions that we must address on that front.)

This morning, however, we have an opportunity to question several of the principals who could have prevented this collapse; they have a lot to answer for. We also have a couple of senior officers who attempted to alert those charged with policing these deals, to no avail. We'll be able to explore why they failed today.

For example, we have before us Jordan Mintz, current General Counsel for Enron Global Development. He attempted to get then Enron President and CEO, Jeff Skilling, to sign deal approval sheets, as was required, but he couldn't get Skilling to sign. We can ask Mr. Skilling about that, who's before us today as well.

We have Enron board members and can query them about their oversight of these transactions.

And, finally, we have former CFO Andrew Fastow and former Managing Director of Enron Global Finance Michael Kopper, who, any way you look at it, stood at the very center of these schemes. And we have Richard A. Causey, who was chief accounting and compliance officer at the time of these deals, and Richard Buy, who was chief risk officer. These two should have known the risks the company was being subject to, and also had to sign off on the various transactions.

We'd like to ask them a lot of questions, but they plan to invoke their Fifth Amendment rights. Even so, this hearing promises to be informative. I look forward to learning more about the people who brought this company down.

Mr. GREENWOOD. I thank the chairman. Mr. Dingell?

Mr. DINGELL. Mr. Chairman, I thank you, and I want to reiterate the words of our chairman, Mr. Tauzin, that this is a bipartisan investigation, and in it we will work together to get to the bottom of this sorry mess. And I want to commend Mr. Tauzin, the chairman of the committee and also the chairman of the subcommittee for their labors in this and the staff, which has worked together splendidly to bring us to where we are today.

We had hoped today that for the first time in this long investigation of Enron and the sorry matters associated with it that we would hear directly from the people who created the partnerships that brought Enron crashing down while they made millions of dollars for themselves. We had hoped to hear why all this had happened. We had hoped to hear what these people thought about the loss of jobs of thousands of employees and the wiping out of the savings and the retirement of thousands more employees, retirees and investors. Pensions funds and general investors in the market all have suffered because of deceit, misbehavior, grasping self-dealing, wrongdoing of the most scoundrelly and improper fashion.

But I note with some distress that most of the key players are staying silent for what appears to be good reason. We know from the Powers report that key executives misbehaved and that others claim to have been clueless about the wrongdoing which was going

on. This leaves them with the unfortunate choice as to whether they were incompetent or corrupt or perhaps both. Clearly, there is room that we can come to all of the above judgments. It is pretty hard to find anybody in this nasty mess to be a person of innocence and character.

For years, they, at Enron, have played fast and loose with their numbers, with their ethics, with their public representations and with their fiduciary duty to the shareholders. As long as the earnings and the stock went up, everyone was happy, and no one needed to know exactly how these numbers were created. Enron's culture, moreover, discouraged anyone from raising objectives. For employees, bonuses and their very jobs depended on being "team players." The infamous "rank and yank" system that got rid of the bottom 10 percent of all employees every year could be, and was, manipulated to get rid of anyone who caused trouble. Enron's executive suite seemed to be the personal sandbox of a group of golden boys who had been clever enough to structure financial vehicles that would take debt and losing assets off the books and turn them miraculously into income. It is interesting to note that lawyers, accountants, officers of the company and others all profited from this.

Mr. Fastow, who almost got "yanked" because of his inability to achieve real earnings in one of Enron's energy divisions, became the star by creating false earnings when he could not create real earnings. Favoritism and chaos reigned in his Global Finance Division, where people with inside information and paychecks from Enron, but their bonuses from LJM2, were negotiating contracts for Mr. Fastow's and Mr. Kopper's partnerships with other Enron employees. If the Enron negotiators were too tough, they sometimes got personal calls from Mr. Fastow. Two people who were engaged to be married were negotiating against each other. Picture that, if you please. One of them actually got a $60,000 payment from one of Mr. Kopper's partnerships for structuring a deal.

Mr. Skilling, the company's president and chief executive officer, was warned about the problems these partnerships were causing in the office. He did nothing except to find another job for the complainant. Nor did others in positions of authority distinguish themselves. There were very few innocent parties in the board rooms and the executive suites at Enron. The board of directors approved these related party transactions, because they were "fast and cheap." In other words, debt and assets could be moved around quickly, and Enron wouldn't have to pay investment bank fees.

Then senior management and the board gave the transactions to the company's chief financial officer, because he would know where to find investors. But as a former Securities and Exchange Commissioner said recently, "A CFO, of all people, has to have an undivided loyalty to the company." And we will inquire, as this goes forward, as to where the loyalty here lay. Such a structure is a recipe for disaster. And a disaster is clearly what followed. Enron, the seventh largest company in the Nation, a darling of Wall Street, a publicly-held company, failed, taking with it the incomes, the savings, the hopes, and aspirations, the dreams of its employees and its retirees.

This committee and this Congress has a duty to find out what happened and to take all necessary action to correct the situation

and to prevent the repetition of such a sorry, stinking mess. We may find the scandal is not only what was illegal. A greater scandal may very well be what was legal. Mr. Chairman, I thank you.

Mr. GREENWOOD. And I thank the ranking member of the full committee. The gentleman from Florida, Mr. Bilirakis.

Mr. BILIRAKIS. Thank you, Mr. Chairman. We have a vote on the floor. I won't take long. I do not have prepared remarks. And the others before me and those after me will have gone into many of the details, which——

Mr. DINGELL. Mr. Chairman, could I just note——

Mr. GREENWOOD. Yes.

Mr. DINGELL. [continuing] if you please, one thing. There are a group of Enron employees here hoping for justice, looking to see what has transpired and watching the debates and the considerations in this matter by the committee with considerable interest, and I thank you for that. They are back against the wall over here.

Mr. GREENWOOD. Yes. And I thank the ranking member. The gentleman from Florida will continue.

Mr. BILIRAKIS. Well, thank you. You know, as we sit in these hearings, Mr. Chairman, I just wonder if particularly the executives of Enron and the executives of the auditors realize what they have done, to their stockholders, to their employees of Enron, to America, and to those of us, really, who have always believed, as Mr. Tauzin said, in the business community. You are really shattering the strength that you have always had among those of us who believe very strongly in the system. I can't imagine that you don't realize what you have done. And on the other hand, with the apparent type of mindsets many of you must possess to have done what you have, maybe you really don't realize what you have done.

It took terrorists from other countries to tear this country and really the world asunder. Now we have fellow Americans who have accomplished something that is almost as bad when we take into consideration what Enrons collapse is doing to the stock markets, and what it is doing in the confidence and faith of the American people in a system of auditors, particularly, and in the corporate community. There is a lot of anger here, and I just hope that you all realize that, and you realize that you brought about that anger. Having said that, Mr. Chairman, I yield back. Thank you.

Chairman TAUZIN. I thank the gentleman. The Chair would like to advise the visitors and the participants here today that a vote is occurring on the floor of the House. Members have had to move over to the House floor to make that vote, but we will continue the process of the opening statements so we can get to the witnesses as rapidly as possible. And the Chair recognizes, at this point, the vice chairman of the full committee, the gentleman from North Carolina, the distinguished Mr. Burr.

Mr. BURR. I thank the Chair. Mr. Chairman, Mr. Greenwood said earlier that this was a painful hearing. I agree totally with that. This is also a sick hearing. It is a sick hearing because of the individuals, it is a sick hearing because investors are sick of the lack of transparency that existed in the Enron books. America is sick that greed drove decisions with no regard for the human lives that were affected by it. And today's pain is magnified even greater by the decision of some to say nothing.

I believe that there are individuals that will be asked to testify in front of this committee, and have testified in front of this committee, that believe by remaining silent that the anger will die or that we will go away or that America will forget. For those who have chosen that route, let me assure you the anger will not die, we will not go away, and America will not forget what has happened.

Mr. Chairman, in its heyday, Enron ran a television ad, and its commercial touted their innovative corporation. I now know what that meant. But the Enron ad went on to show the Enron logo at the end, and it said, "Why, why, why?" You know, today we are here with the same logo and the same question, "Why, why, why?" Mr. Chairman, I want to commend you for not only the subcommittee but the full committee's commitment to get the answers to the question, "Why, why, why?" I yield back.

Mr. GREENWOOD. The Chair would gladly yield the gentleman as much time as he chooses. But in the absence of other members prepared to make opening statements now, we are going to suspend for at least 5 minutes until the next member is with us.

[Brief recess.]

Mr. GREENWOOD. The committee will come to order. The guests will please be seated. The Chair recognizes the gentlelady from Colorado for 5 minutes for an opening statement.

Ms. DEGETTE. Thank you, Mr. Chairman, and I want to thank both you and the chairman of the full committee and Mr. Dingell also for these unprecedented last couple of weeks. We have received a crash course in corporate management, special purpose entities and auditing and accounting practices. This debacle has been a sobering revelation of the dark side of arrogance, greed and apparent disdain for legitimate public safeguards. I understand we have a number of Enron employees here today, and I will assure each and every one of you that we will get to the bottom of this, we will find what happened, and we will make sure it never happens again, to the best of our ability.

By the time we finish this investigation, Enron may be the most analyzed, dissected and discussed corporation in history. I don't think any of us like what we have seen. I wonder about the mindset, for example, that allows sketchy partnerships to be created rife with conflicts of interest which are undisclosed. I have tried to conceptualize decisions that allowed lower-level employees, like the folks here today, to lose their life savings while senior executives walked away with millions of dollars without seemingly doing anything for that money. I have come to realize that there are some people who think they are smarter than the system and are willing to risk what is not theirs for personal gain. And I am shocked by the apparent ambivalence, at best, by a board of directors who somehow seems to feel that when employees and officers are self-dealing that these same people, the foxes guarding the henhouse, should somehow come to the board and independently give this information to the board rather than the board ferreting out, which I think is their fiduciary duty.

Mr. Chairman, I have a long opening statement here, but I think I would rather get to what the witnesses have to say, and so I

would ask unanimous consent to submit the whole opening statement for the record, and I will yield back the balance of my time.

Mr. GREENWOOD. Without objection, the statement of the gentlelady in its entirety will be incorporated into the record.

[The prepared statement of Hon. Diana DeGette follows:]

PREPARED STATEMENT OF HON. DIANA DEGETTE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF COLORADO

Thank you, Mr. Chairman. The last few days have been unprecedented. We have received a crash-course in corporate management, special purpose entities, and auditing and accounting practices. The Enron debacle has been a sobering revelation of the dark side of arrogance, greed, and apparent disdain for legitimate public safeguards.

By the time we finish our investigation, Enron may be the most analyzed, dissected, and discussed corporation in history. I must admit I don't like what I've seen. I've wondered about the mind-set that allows sketchy partnerships to be created rife with conflicts of interest. I've tried to conceptualize the decisions that allowed lower-level employees to lose their life savings while senior executives walked away with millions. I've come to realize that there are some people who think they are smarter than the system and are willing to risk what is not theirs for personal gain.

Mr. Chairman, all of us have tried to comprehend this web of transactions, partnerships, and misinformation. The Powers Report was illuminating. The corporate climate of enrichment and exploitation was shocking. The testimony of Enron and Arthur Anderson principals in the past few days demonstrated little in the way of responsibility or remorse. We can believe one of two stories: either many key people were out of the loop, including the top management and board members, or, many people knew what was going on and turned a blind eye. Either story leads to the same conclusion. There were gross breaches of the board's fiduciary duty. A member of Enron's board of directors will tell us today that it is more important for us to focus on what the board knew when it was approving these highly problematic related-party transactions. I believe it is more important to ask if the board was acting in its true fiduciary duty by attempting to understand and direct the company's business.

In the past few days we have witnessed finger-pointing, denials of involvement, and attempts to side-step questions. But I am waiting for someone who takes responsibility, someone who did know what was going on. In any corporation, management and corporate executives talk about being in charge and making the tough decisions. There must have been a chain of command and internal checks against abuse. Today, I would like to know why Jeffrey Skilling, the former CEO of Enron, failed to make the tough decisions required of him in order to check the conflict of interest of senior Enron executives.

Thanks to the Powers Report, we know that senior management employed tricky transactions called SPE's to transfer risk and cover up liabilities. Investors, government regulators, and employees were duped by the very people who were supposed to shepherd resources and act with fiscal prudence. The management team and the board of directors were hired to protect their employees and to act as wise stewards for the company's resources, to create a sound foundation for strong future growth. That was their job and their fiduciary duty. Now, we have a glimpse of what was really going on. For Enron, business as usual was dirty business.

Take, for example, the failure of Mr. Jaedicke and his audit committee to inquire about the nature of the SPE's and to ensure that Fastow was following the rules. I look forward to hearing what both Mr. Jaedicke and Mr. Winokur, a member of the Enron board, have to say about this.

I have to say that the disappointment of this story cuts very deep. There are some who think this story will end in a week or a month. I don't think so. There are some other corporations who are standing on the sidelines, companies who have engaged in the same practices, thinking they are immune. Well, think again. This committee is not going away in a week or a month. We are going to demand more transparency. We are going to make sure that auditors do their job, and not take millions to rubber-stamp fraud. We are going to get to the bottom of this and then keep going. This bankruptcy will become a landmark, initiating reform and oversight that will force corporations to come clean and stay clean.

I have many questions, as we all do. I am anxious to discuss all of this with our witnesses.

Thank you, Mr. Chairman.

Mr. GREENWOOD. The Chair recognizes, for purposes of an opening statement, the gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman, and let me again compliment you and the staff for a very thorough job here investigating something as we look into more deeply gets worse and worse.

When you look at the presentation that Mr. Deutsch provided, it is probably a little complicated to most Americans, but I would give the analogy, it is basically the analogy of the special purpose entities. Enron was putting money in their right pocket of approximately, let us say, $10 and then pulling out a fictitious amount of $400 out of the left pocket and calling that income. Obviously, this is a case of failure to disclose, and it will be up to the Justice Department to prosecute this and to ferret out all the details.

What we can do today, though, is to bring attention to this type of operation. When the Securities Act of 1993 was passed, the whole intent was that these individuals would provide disclosure. My colleagues, in capitalism, in a free market, unless there is a sense of compunction, a sense of consciousness, we can legislate till hell freezes over and we won't be successful. It is dependent upon men and women to put forth some honesty, and obviously it was not here.

I was alarmed to read in the Wall Street Journal that the top executives at Enron shielded their pension benefits. It wiped out the retirement saving of its workers, but they had the gall, the unmitigated gall to have financial dealings where, for example, Enron Chairman Kenneth Lay used a private partnership to protect millions of dollars worth of executive pension benefits. So the more we look into this, the more appalling it gets.

I imagine we are going to encounter today from Mr. Skilling what is called this plausible deniability regarding his role or knowledge of these transactions. However, I believe you will find this panel extremely skeptical as our investigation has uncovered numerous warnings, some directly reporting—that were reported to Mr. Skilling as to the problems with the various transactions. We have the Watkins memo to Ken Lay in August, which also mentioned former executive Cliff Baxter's conversation to Skilling regarding these transactions. We also have before us today Mr. McMahon, former treasurer, now president and COO of Enron, who also repeatedly raised concerns. And Jordan Mintz, former general counsel of Enron Global Finance and current general counsel of Enron Global Development, who also raised concerns. There are plenty of flags. People were just denying the facts. Arthur Andersen, in its role, appeared to have acquiesced in these dealings, despite concerns raised internally in a February 2001 memo.

And, again, I would like to quote, as the chairman has, both the chairman of the full committee and the chairman of the Oversight Committee, from the Powers report that these transaction consisted of, ''a flawed idea, self-enrichment by employees, inadequately designed controls, poor implementation, inattentive oversight.'' We are indeed uncovering more and more information. Unfortunately, many of the folks today will use the Fifth Amendment, which they are entitled to do. But that leaves the general impression that something occurred here which was wrong, and they are afraid to incriminate themselves.

I would close, Mr. Chairman, by saying that something is going on here in space and time and that we, as Members of Congress, have a fiduciary responsibility to ferret out the details and facts for the American people, and it is an awesome responsibility. And I yield back the balance of my time.

Mr. GREENWOOD. The Chair thanks the gentleman and recognizes, for an opening statement, the gentleman from Louisiana, Mr. John.

Mr. JOHN. Thank you, Mr. Chairman. On Tuesday, this committee had an opportunity to review and discuss the Powers report. It provided the subcommittee with at least a little glimpse into the questionable and, more likely, criminal activities that contributed to Enron's financial collapse. Yesterday, the full committee had an opportunity to hear from experts in the auditing and accounting field about what we can learn from the lessons of Enron. Today, however, is the main event. While it appears that we will learn from the first three panels, at most, their ability to recite the Fifth Amendment, I am hoping that the remaining witnesses can shed a little more light in the numerous partnerships and transactions and businesses with Enron.

It is important to remember, from a committee standpoint, that we, the members, do not sit as prosecutors, judges, or jury members in determining the guilt or innocence of our panelists. I have confidence in the ability of the U.S. Department of Justice to pursue justice of what clearly to me appears to be securities fraud, insider trading and obstruction of justice.

The illegal and unethical conduct of Enron officers and managers is an important component in our congressional investigation, but it is the legal loopholes and business practices of companies exemplified by Enron's use of, quote, ''aggressive accounting,'' that I feel is our primary charge of this subcommittee. We cannot protect against every bad actor in corporate America who decides to willfully break the law, although we can make sure that the tools are available to regulators so that we can catch them. We can, however, make sure that shareholders and investors are not misled by inadequate disclosure, conflicts of interests or may I quote from the Powers report, ''walking conflicts of interest,'' and a lack of independence in the performance of auditing functions.

Mr. Chairman, I believe today we have the architects of Enron's house of cards, and I am eager to hear from Mr. Skilling and others, their views and their roles in the eventual collapse. The Powers report concluded that many of the partnerships created by the first three witnesses were, from the very beginning, fraudulently created, because they transferred no risk and were designed for the very sole purpose of shifting debts and liabilities off balance sheets. Worse still, these related party transactions allowed Mr. Fastow and others to enrich themselves with extraordinary compensation packages which hardly seem justified since these are the very transactions that created the chain reaction that destroyed the company, the seventh largest company and the largest bankruptcy in the history of America.

I do not wish to paint all of the witnesses with one and the same broad brush. Mr. Mintz, for example, had the good sense to recognize the conflict of interest by Enron employees serving in positions

in both the company of Enron and the partnerships, one of which was LJM, and made efforts many times to raise these concerns. Perhaps he can explain, and I am eager to hear from him, to the subcommittee why so few others appear to have recognized or expressed the same concerns.

Mr. Chairman, no one on this committee wants to see a repeat of the events that brought down Enron. Hindsight often gives us 20/20 vision in many things that we do, and our challenge is to use these lessons that we will learn to make sure that there is no repeat performance in corporate America. Our efforts will not restore the retirement savings of Enron employees who watched their 401(k) plans evaporate, nor will it return investors' billions of dollars in equity that disappeared in a very, very few short months. However, with your continued leadership, Mr. Chairman, and the chairman of our subcommittees, we can get to the bottom of this mess and take legislative action so that this will never happen again.

With that, I yield back the balance of my time so that we can hear from the people the Powers Report identifies as largely responsible for this American corporate disaster. Thank you, Mr. Chairman.

Mr. GREENWOOD. The Chair thanks the gentleman and recognizes, for an opening statement, the gentleman from New Hampshire, Mr. Bass.

Mr. BASS. Thank you, Mr. Chairman, and I will be brief. We have had a series of hearings on this issue, and we have become educated. The more we learn, the more nauseating the whole story becomes. There are issues of insider trading, nondisclosure, possible obstruction of justice, irregular accounting practices, the list goes on.

A number of the witnesses will take the Fifth Amendment today, which is understandable. One, Mr. Skilling, will testify, I suspect, as he said in a December that what happened to Enron was a tragedy but one for which—but not one for which he was responsible. He said in his interview, quote, "I didn't do anything wrong."

Well, I don't know whether ethics or morality or cruelty or inhumanity are really right or wrong; I think they are wrong. I hope that after we beyond the question of who wrote what memo to who, who put whose signature on a memo, the complexity of all the transactions are finally bared and the horrible truth becomes evident that we really ask as a committee how much illegality occurred, firstly, and, second, what we can do as a full committee to make sure that this tragedy perpetrated by these business cowboys never happens again.

I appreciate this hearing process. I think it is going to be long, difficult, but ultimately I think the investment world will be better off and the capital markets will be more reliable and honest as a result of our efforts today and the days to come. I yield back.

Mr. GREENWOOD. The Chair thanks the gentleman and recognizes, for an opening statement, the gentleman from Illinois, Mr. Rush.

Mr. RUSH. Thank you, Mr. Chairman, for what has been the third hearing this week on this particular matter. Before I begin, I want to call your attention to the attention of the members of this

committee that present in the room today we have one of the world's most outstanding citizens, a man who I have known for many, many years, for decades even, a man who has played in pivotal role in my life on more than one occasion, a man who is now fighting for the Enron employees, the Reverend Jesse L. Jackson. So would you please acknowledge him, Mr. Chairman, that Reverend Jackson is in the room with us today.

Mr. GREENWOOD. The Chair welcomes the gentleman, Mr. Jackson, to our proceedings this morning.

Mr. RUSH. Mr. Chairman, I want to thank you for holding this hearing, and I intend to be brief. I understand those of you who have come under the most public scrutiny intend to avoid questioning this morning. And for those of you who refuse to testify and know your guilt, I ask you, was it worth it? Was the selling of your morals worth it? Was the selling of your souls worth it?

In my State alone, the State of Illinois, State pension plans lost a total of $34 million out of a total $1.4 billion nationwide that was lost. This was money, hard-earned money set aside to provide secure retirement for thousands of citizens who have dedicated their lives to public service. These are the teachers who help raise our children and educate our children. These are the police officers who patrol our streets and protect our families and our homes. These are public servants who keep our cities and our towns and our villages running on a day-to-day basis.

The money—these pensions were supposed to fulfill these workers' hopes and their dreams and provide a secure retirement for them. This morning, millions of dreams have been deferred, if not lost. This very morning, millions of dreams have been denied. Parents are anguishing over how they will afford their children's education. Elderly workers are being forced to put off retirement indefinitely. And America's sense of financial security has been shaken at its very core.

Mr. Chairman, more than having these men explain their actions to the Nation, more than making sure that the guilty are punished, this hearing is about returning the financial stability and sense of economic interest in security to our Nation. Just as the World Trade Center bombers have shaken the sense of personal security for millions of Americans, the Enron catastrophe has left our public without a sense of economic security. At the center of this economic meltdown, we find a handful of economic terrorists. But unlike most terrorists who base their actions on twisted and perverse ideas of justice and righteousness, the economic terrorists at Enron had one cause: selfishness and greed.

So as we begin today's hearing, I ask each of you who profited from the downfall of thousands whether it was worth it. I suspect that some of you may answer yes; however, I sincerely hope that you live long enough to regret that particular sentiment. Thank you, Mr. Chairman, and I yield back the balance of my time.

Mr. GREENWOOD. The Chair thanks the gentleman and recognizes, for purposes of an opening statement, the gentleman from Oklahoma, Mr. Largent.

Mr. LARGENT. Thank you, Mr. Chairman. I too will be brief in an effort to move this hearing forward and try to bring a little perspective and balance to my comments here.

Mr. Chairman, as you know, last night we prepared for this subcommittee hearing. Our subcommittee and staff met about six o'clock last night, and I was particularly impressed by some comments that you made that I felt like really brought some focus for the purpose and intention of this hearing. It is not a time for us demagogue, although there is a lot of that going on, or even to prosecute. That is up to the Justice Department to figure out what laws currently on the books that have been broken, and I am sure that they will do a competent job of that.

But, rather, the purpose for this hearing is to find out the laws that were not broken but the things that were done in this Enron debacle that were legal but perhaps shouldn't be. And I think that is the purpose of this hearing, and I look forward to hearing the testimony of the folks that are on the panels today so that we can find out and help prevent, perhaps, through the passage of additional laws that are not on the books but should be. And so, Mr. Chairman, with that, I thank you for holding this hearing, and I look forward to the testimony and yield back my time.

Mr. GREENWOOD. The chairman thanks the gentleman and agrees with him and recognizes, for an opening statement, the gentleman from Michigan, Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman. Over the past several weeks, we have held numerous hearings to explore this house of cards that was once the might Enron Corporation. Yesterday, we heard from a panel of experts who walked through the accounting principles, the legal, ethical and moral principles that should be adhered to in corporate America. In the past, we have heard from Andersen employees about the shredding of documents and the destruction of e-mails that went on in an effort, I am sure, to cover up this whole mess. We have heard from Mr. Powers about his commission is finding and the actions of several Enron employees to set up special purpose entities to assist in cooking the books at Enron. We have heard and read about the totality lax oversight by Mr. Lay, Mr. Skilling and other executives on Enron's Board of Directors.

Enron's Board of Directors gave dangerous flexibility to Mr. Fastow in allowing him to establish several of these special purpose entities. They, the board of directors, supposedly put in a number of checks and balances in place when they waived their conflict of interest provisions, but thus far all the checks we have seen, tens of millions of dollars worth, went into bank accounts of Mr. Fastow and others. There certainly were, there certainly were no checks or balances in the equations and no follow-up to make sure the company wasn't being bilked.

We have learned new terms like aggressive accounting, which in this case translates, I believe, into making individuals richer while we sticking it to the shareholders and the workers. I am glad to see some of the Enron workers here today who gave so much and lost so much. This new aggressive accounting I believe is the result of a new cavalier attitude in corporate America since the passage of the Securities Litigation Reform Act of 1995, or, as some of us refer to it, the Securities Rip-Off Act. As I look at all that has happened, this new law, what it does, it insulates corporations from legal actions by putting up roadblocks so employees and stock-

holders cannot take legal actions when the books have been stacked against them.

Mr. Chairman, it will be difficult, if not impossible, for Enron to emerge as a credible company from bankruptcy without a comprehensive and complete purging of all Enron executives and board members who were at the helm during this whole debacle. They must be held accountable, and I hope the shareholders and the employees of Enron will do themselves a favor and get a true board of directors and new management team.

Mr. Chairman, I could go on with my statement, but I am going to yield back the balance of my time, because I am really interested to see who is going to testify, who is not going to and look forward to the questioning and cross examination. I appreciate your leadership in this whole matter. We have spent a lot of time together the last couple of weeks and I look forward to continuing on this Enron mess. Thank you.

Mr. GREENWOOD. The Chair thanks the gentleman, and we are almost there. The Chair recognizes the gentleman from Ohio, Mr. Strickland, for an opening statement.

Mr. STRICKLAND. Thank you, Mr. Chairman. Today, we are taking an in-depth look at the corporate thievery and greed that resulted in the collapse of Enron. Thousands of people lost their jobs and their retirement savings. Investors and shareholders lost billions in debt and equity. Plans and dreams of these people have gone up in smoke. The American people have lost faith in the stock market, because they don't know if they can believe what publicly held companies and their auditors are telling them about profits and losses. Enron's earnings weren't real, because they used financing and accounting slights of hand so complex that even sophisticated analysts could not read them.

Some of the people most responsible for this disaster are before us today and will take the Fifth Amendment. They are the ones who violated their fiduciary duty to Enron's shareholders, but apparently they are seeking even more. According to the press yesterday, Mr. Causey and Mr. Buy are currently negotiating their severance packages from Enron, as is Kenneth Lay, the former president. Let us review for a moment how some of these people have already benefited from their Enron stock in addition to their most generous salaries.

Mr. Causey, who was the chief accounting officer, has cashed out to the tune of $13.3 million. Mr. Buy received over $7 million in proceeds in 2001 alone. Kenneth Lay, Enron's former chairman and chief executive officer, made $18 million in salary and compensation in 2000 and received over $100 million in stock sale proceeds. He promised last year that he would give up his $60.6 million severance package, but now he wants a severance package also it seems. Mr. Skilling, who took out $67 million in profits, plus his generous salary, got a consulting contract with Enron when he left. We will want to know more about his severance package today. Mr. Fastow got only $30 million in stock proceeds from Enron, but he took another $30 million out with his side deals. Mr. Kopper got at least $10 million.

Over 4,000 former Enron employees who lost their jobs in the Enron debacle were given, for the most part, $4,500 in severance

pay to get through a transition period. Some of them are in dire straits, as are a number of people with pension plans heavily invested in Enron stock. I think it would be appropriate to provide Mr. Lay, Mr. Causey and Mr. Buy each with $4,500 in severance pay to help them through a transition period. Any additional claims they may have should be part of the thousands of claims of the uninsured creditors that the bankruptcy court will handle. One cent on the dollar might be an appropriate recovery.

Whether the actions we have uncovered are illegal or legal will be determined, but we do know they were certainly unethical and immoral. Now, perhaps that is not important to the Enron business executives who have tried to walk away embarrassed but rich, but it is important to the American people, and it must be important to those of us who were elected to represent the people. Consequently, we must do everything, Mr. Chairman, to see that whatever is necessary is done to see that such happenings never happen again. Thank you.

Mr. GREENWOOD. The Chair thanks the gentleman and now calls forward our first witness. Our first witness is Mr. Andrew S. Fastow, former chief financial officer, Enron Corporation. Mr. Fastow is here, pursuant to a subpoena served earlier this week. Mr. Fastow, if you will please be seated at the table.

Mr. Fastow, you are aware that the committee is holding an investigative hearing and when doing so has had the practice of taking testimony under oath. Do you have any objection to testifying under oath?

Mr. FASTOW. No, sir, I do not.

Mr. GREENWOOD. Thank you. The Chair then also advises you that under the rules of the House and rules of the committee, you are entitled to be advised by counsel. Do you desire to be advised by counsel during your testimony today?

Mr. FASTOW. Yes, Mr. Chairman. My counsel, Mr. John Keker, is seated next to me.

Mr. GREENWOOD. Okay. For the record, could you spell Mr. Keker's name for us.

Mr. KEKER. K-E-K-E-R.

Mr. GREENWOOD. Thank you, Mr. Keker. In that case, would you please rise and raise your right hand, and I will swear you in.

[Witness sworn.]

Mr. GREENWOOD. In that case, you are now under oath, and you may give a 5-minute summary of your written statement. Do you have an opening statement, sir?

Mr. FASTOW. No, sir; I do not.

Mr. GREENWOOD. Okay. In that case, the Chair will then recognize himself for questions to the witness. Mr. Fastow, you were the CFO of a Fortune 10 company, a full-time, to be sure. Yet somehow you managed to also run to private equity funds, using your insider status at Enron to attract investors and enrich yourself by tens of millions of dollars by doing deals, and highly questionable deals at that, with your own company. You also, we have learned, used your power, position and influence to threaten and pressure Enron employees in an attempt to obtain favorable terms for your private partnerships.

The question, Mr. Fastow, is how could you believe that your actions were in any way consistent with your fiduciary duties to Enron and its shareholders or with common-sense notions of corporate ethics and propriety? How do you answer, sir.

Mr. FASTOW. Mr. Chairman, I would like to answer the committee's questions, but on the advice of my counsel, I respectfully decline to answer the question based on the protection afforded me under the Constitution of the United States.

Mr. GREENWOOD. Let me be clear, Mr. Fastow. Are you refusing to answer the question on the basis of the protections afforded to you under the Fifth Amendment of the United States Constitution?

Mr. FASTOW. Again, Mr. Chairman, on the advice of my counsel, I respectfully decline to answer the questions based on the protection afforded me under the United States Constitution.

Mr. GREENWOOD. And will you invoke your Fifth Amendment rights in response to all of our questions here today?

Mr. FASTOW. Yes, sir, Mr. Chairman.

Mr. GREENWOOD. Okay. We regret that, but it is your right. It is therefore the Chair's intention to dismiss the witness, but the committee, of course, reserves all of its rights to recall the witness at any time. Mr. Deutsch, do you agree with our decision?

Mr. DEUTSCH. Mr. Chairman, normally I would very easily, but I think that this might be the only time that we are going to have any chance in the public setting to even attempt to ask Mr. Fastow questions. And I know he is intending to invoke his Fifth Amendment prerogative, which I take very seriously, but at the same time, within the constraints that he has, and he has that right, I would ask him if there is any area that he feels he can discuss, any questions within the area of his—so our understanding—I mean I just got rebriefed by our staff on the Rhythms transactions, and still—and there will be some people who testify, but obviously this is a transaction that you set up, that you were the general partner of and the CFO at the time.

Mr. GREENWOOD. The Chair must note that we would all, of course, like to question Mr. Fastow, but we have had our discussions with his attorney. It was clear to Mr. Fastow and to his attorney that should he invoke his Fifth Amendment to which he is entitled, we would dismiss him and we have not had this conversation up until this moment. So the decision of the chairman is firm, and Mr. Fastow, you are dismissed, and you may be on your way.

Mr. FASTOW. Thank you, Mr. Chairman.

Mr. GREENWOOD. The Chair then would call forward our next witness, Mr. Michael J. Kopper, former managing director of Enron Global Finance. Good morning, Mr. Kopper.

Mr. KOPPER. Good morning, Mr. Chairman.

Mr. GREENWOOD. Mr. Kopper, do you have an opening statement?

Mr. KOPPER. No, I do not.

Mr. GREENWOOD. Okay. You are aware, Mr. Kopper, that this committee is holding an investigative hearing, and it is a custom and the practice of this committee when holding an investigative hearing to take our testimony under oath. Do you have any objection to testifying this morning under oath?

Mr. KOPPER. No, I do not.

Mr. GREENWOOD. Okay. The Chair should then advise you that under the rules of the House and the rules of the committee, you are entitled to be advised by counsel. Do you desire to be advised by counsel during your testimony today?

Mr. KOPPER. I do, and I am.

Mr. GREENWOOD. And would you identify your counsel, please?

Mr. KOPPER. I have Mr. Wallace Timmeny and David Howard here as my representatives.

Mr. GREENWOOD. And could you, Mr. Kopper, please pull your microphone a little closer——

Mr. KOPPER. Yes.

Mr. GREENWOOD. [continuing] and make sure we can hear you? And if your attorneys would spell their last names for the record.

Mr. TIMMENY. Timmeny is T-I-M-M-E-N-Y.

Mr. HOWARD. And Howard is H-O-W-A-R-D.

Mr. GREENWOOD. I thank the gentlemen. In that case, Mr. Kopper, would you rise and raise your right hand, and I will swear you in.

[Witness sworn.]

Mr. GREENWOOD. You have already indicated, Mr. Kopper, that you did not come with an opening statement, and so the Chair will then recognize himself for questions.

Mr. Kopper, according to the committee's investigation and the Powers report, you violated Enron's code of conduct by investing in partnerships doing business with Enron without board approval and corrupting others at Enron to join you in your dubious enterprises. You enriched yourself at Enron's expense to the tune of more than $10 million, and you used your power, position and influence within Enron to threaten and pressure Enron employees in an attempt to obtain favorable terms for your private partnerships. Can you, sitting her under oath, truly deny any of this?

Mr. KOPPER. Mr. Chairman, I respectfully decline to answer the question based on my right under the Fifth Amendment to the United States Constitution not to be a witness against myself.

Mr. GREENWOOD. Let me be clear, Mr. Kopper. Are you refusing to answer the question on the basis of the protections afforded to you under the Fifth Amendment to the U.S. Constitution?

Mr. KOPPER. Yes, I am.

Mr. GREENWOOD. Will you invoke your Fifth Amendment rights in response to all questions here today?

Mr. KOPPER. Yes, I will.

Mr. GREENWOOD. It is therefore the Chair's intention to dismiss this witness, but the committee, of course, reserves all of its rights to recall the witness at any time. Mr. Deutsch, would you concur in this?

Mr. DEUTSCH. Yes.

Mr. GREENWOOD. Okay. Mr. Kopper, you are dismissed.

Mr. KOPPER. Thank you, Mr. Chairman.

Mr. GREENWOOD. And the Chair calls forward Mr. Richard B. Buy, chief risk officer of Enron Corporation, and Mr. Richard A. Causey, chief accounting officer, Enron Corporation. Good morning, Mr. Buy and Mr. Causey. You gentlemen are aware, I believe, that the committee is holding an investigative hearing, and as you have heard, when doing so we have the practice of taking testimony

under oath. Do either of you have any objection to testifying under oath?

Mr. CAUSEY. No, sir.

Mr. BUY. No, I don't.

Mr. GREENWOOD. Hearing no such response, the Chair then advises you that under the rules of the House and the rules of the committee, you are entitled to be advised by counsel. Do you desire to be advised by counsel during your testimony?

Mr. CAUSEY. I do.

Mr. GREENWOOD. Mr. Causey, would you identify your attorney?

Mr. CAUSEY. Yes, Mr. Reed Weingarten.

Mr. GREENWOOD. Mr. Weingarten, would you spell your last name for us, please?

Mr. WEINGARTEN. W-E-I-N-G-A-R-T-E-N.

Mr. GREENWOOD. Mr. Buy, do you choose to be represented by attorney?

Mr. BUY. Yes, I do.

Mr. GREENWOOD. And can you identify your attorney for us, please?

Mr. BUY. Mr. J.C. Nickens.

Mr. GREENWOOD. Mr. Nickens, would you spell your last name, please?

Mr. NICKENS. Yes. That is N-I-C-K-E-N-S.

Mr. GREENWOOD. Okay. In that case, gentlemen, if you would both rise, I will administer the oath.

[Witnesses sworn.]

Mr. GREENWOOD. Thank you. You may be seated. You are both under oath. Mr. Buy, do you have an opening statement?

Mr. BUY. No, I don't.

Mr. GREENWOOD. Mr. Causey, do you have an opening statement?

Mr. CAUSEY. Yes, sir; I do.

Mr. GREENWOOD. Okay. The Chair recognizes the gentleman, Mr. Causey, for 5 minutes for an opening statement.

TESTIMONY OF RICHARD A. CAUSEY, CHIEF ACCOUNTING OFFICER, ENRON CORPORATION; AND RICHARD B. BUY, CHIEF RISK OFFICER, ENRON CORPORATION

Mr. CAUSEY. Mr. Chairman, members of the committee, I am appearing here today voluntarily at the request of the committee. As you may be aware, a few days ago I was advised by my Enron-provided counsel that he could no longer represent me. I immediately undertook a search for new counsel, and within the past 24 hours I have retained the services of Steptoe, Johnson, Collier & Shannon. My new counsel has been unable to provide me meaningful advice during this brief period.

I, therefore, respectfully requested a brief delay. I was informed by the committee staff that notwithstanding these facts my presence today was desired by the committee. Out of respect for the committee, I have voluntarily appeared. However, without the benefit of meaningful opportunity to consult with counsel, I am respectfully unable to answer questions from the committee at this time. Therefore, on the advice of counsel, I will respectfully decline to answer questions by the committee. Thank you.

Mr. GREENWOOD. I thank the gentleman for your statement. The chairman and the committee are disappointed that we will not be able to receive your testimony today. We know that you had prepared extensively for interviews with our staff, and we thought that would have sufficed. The facts have not changed, but we do understand the change in your legal representation and pleased that you are here as well.

I am going to ask a question to both of you gentlemen. Both of you gentlemen were specifically charged by the board of directors with the responsibility to ensure that the transactions between Enron and LJM Partnerships were truly arms-length transactions, beneficial to Enron and its shareholders. We now know that many of those transactions were anything but beneficial to Enron, and in fact contributed mightily to Enron's dramatic collapse. Do you believe, gentlemen, by your actions or your inactions, you failed Enron's employees and shareholders? Mr. Causey, would you respond to that question?

Mr. CAUSEY. Mr. Chairman, on the advice of counsel, I will respectfully decline to answer that question.

Mr. GREENWOOD. Let me be clear, Mr. Causey. Are you refusing to answer the question on the basis of the protections afforded to you under the Fifth Amendment to the U.S. Constitution?

Mr. CAUSEY. Yes, sir, I am.

Mr. GREENWOOD. Will you invoke your Fifth Amendment rights in response to all questions here today, Mr. Causey?

Mr. CAUSEY. Yes, sir, I will.

Mr. GREENWOOD. Okay. Mr. Buy, how do you respond to the question?

Mr. BUY. For the reasons outlined in a letter submitted to the committee last night and on the advice of counsel, I respectfully decline to answer any questions.

Mr. GREENWOOD. Mr. Buy, let me be clear. Are you refusing to answer the question on the basis of the protections afforded to you under the Fifth Amendment to the U.S. Constitution?

Mr. BUY. Yes.

Mr. GREENWOOD. And will you invoke your Fifth Amendment rights in response to all of our questions here today, Mr. Buy?

Mr. BUY. Yes, I will.

Mr. GREENWOOD. In that case, it is the chairman's intention to dismiss both of these witnesses, but the committee, of course, reserve all of its rights to recall the witnesses at any time. Mr. Deutsch, do you concur in this decision?

Mr. DEUTSCH. Yes.

Mr. GREENWOOD. Gentlemen you are, and your attorneys are, excused.

The Chair then would call forward Mr. John Olson, of Sanders, Morris and Harris, senior vice president and director of Research; Mr. Thomas H. Bauer, partner at Andersen LLP; Mr. Jeffrey McMahon, president and chief operating officer, Enron Corporation; Mr. Jordan Mintz, vice president and general counsel for Corporate Development.

Good morning, gentlemen. Gentlemen, I believe that you are aware that this committee is holding an investigative hearing, and that it is the practice of this committee when holding an investiga-

tive hearing to take testimony under oath. Do any of you object to providing your testimony under oath?

Seeing no such objection, the Chair would then advise you that under the rules of the House and the rules of this committee, you are entitled to be advised by counsel. Do you desire to be advised by counsel during your testimony. Mr. Olson?

Mr. OLSON. No.

Mr. GREENWOOD. Mr. Bauer?

Mr. BAUER. Yes, I do.

Mr. GREENWOOD. Would you identify your attorney, sir?

Mr. BAUER. Mr. Scott Schreiber.

Mr. GREENWOOD. Would you spell his last name, please?

Mr. SCHREIBER. S-C-H-R-E-I-B-E-R.

Mr. GREENWOOD. Thank you. Mr. McMahon?

Mr. MCMAHON. Yes, I do. And my counsel is Mr. Levy, L-E-V-Y.

Mr. GREENWOOD. Thank you, sir. Mr. Mintz?

Mr. MINTZ. Mr. Chairman, also Mr. Levy is representing me.

Mr. GREENWOOD. Okay. In that case, gentlemen, if you would rise, raise your right hands, I will swear you in.

[Witnesses sworn.]

Mr. GREENWOOD. You are now under oath. The Chair would advise the witnesses and the audience that two votes have just been called on the floor of the House, and we know you have waited a good while already, but it will take at least 25 minutes for us to get over and make these two votes and come back. We will adjourn for 20 minutes and see if we cannot resume then. This hearing is suspended.

[Brief recess.]

Mr. GREENWOOD. The committee will reconvene. Again, we thank the witnesses and apologize for the break there. There will not be any more for the afternoon, so we won't have those interruptions. Mr. Olson, you are recognized for 5 minutes for your opening statement, sir.

TESTIMONY OF JOHN OLSON, SENIOR VICE PRESIDENT AND DIRECTOR OF RESEARCH, SANDERS, MORRIS, HARRIS; THOMAS H. BAUER, PARTNER, ANDERSEN LLP; JEFFREY MCMAHON, PRESIDENT AND CHIEF OPERATING OFFICER, ENRON CORPORATION; AND JORDAN H. MINTZ, VICE PRESIDENT AND GENERAL COUNSEL FOR CORPORATE DEVELOPMENT, ENRON CORPORATION

Mr. OLSON. Thank you very much, Mr. Chairman, members of the committee. I am a securities analyst from Houston, Texas, and I have been covering Enron since before it was Enron. I have had the distinction, I guess, of not having recommended it for the last 10 plus years until the very end when the company was sinking fast.

Thank you for the opportunity to discuss some very, very important credibility issues for Wall Street and the American public, which have been created by the collapse of Enron. I will be mercifully brief. There has been tremendous collateral damage in the capital markets since Enron went down 2 months ago. It is still ongoing. You can help bring it to a stop. Your own confidence in the

investing process must have already been sorely tested after all that you have heard. I hope my comments can provide a securities analyst perspective on what went wrong and how we could fix it. With the help, perhaps, of 20/20 hindsight, let me try to answer.

Enron was good at some things, but it was great at gaming the system. It gamed us on Wall Street, it may have gamed its auditors and outside counsel, but it also seems some insiders were gaming Enron proper and they were gaming each other. The Wall Street gaming was principally from the partnerships or the special purpose entities. They involved marketing marginal assets with marginal accounting and marginal financial structures. All of these involved bankers, rating agencies and private placement people.

What they did not involve, I might point out, were stock analysts like myself. We never saw or were never even aware of these deals. They were considered confidential or privileged by Enron and obviously for Enron's particular reasons. If you had asked me how many partnerships Enron had last October before this situation blew up, I would have told you maybe five or so, I mean just what they had disclosed in the annual report, not hundreds, not thousands. No one's quite sure of just what the number came to be. All of this was happening in something of a parallel universe.

The revelations about these deals were what sank the Enron ship. Phony earnings and phony equity absolutely destroyed all investor confidence in a stock which had risen 40 percent annually for the last 5 years. Portfolio managers had loved the stock; didn't like it, loved the stock. Despite numerous blunders and diversification fiascos, it didn't matter. The stock was going up 40 percent a year. It was a tide lifting all the boats. Then disaster struck. The wheels fell off in mid-October, and in only 6 weeks time the company was gone. It took Long-Term Capital Management 5 weeks.

Where were the analysts then and were they compromised? Yes and no. Let me explain. Enron paid out lots of investment banking fees. The bankers loved Enron. Enron loved analysts' strong buy recommendations. Guess what happened? It got them, lots of them. This is an abuse. When the worm turned and Enron's stock price fell from 90 to 80 to 50 to 20 to 10 to 5 and so forth, all the way down to zero, the opinions didn't really change until the bitter end. Analysts are typically smart people, my competitors especially are a lot smarter than I am. They can get out of the way of a freight train, and this was a freight train. They didn't. Why not? I think it was the culture that was developed over what I call the crescendo phase of the bull market over the last 5 years, where, again, investment banking had a major influence in research.

Ladies and gentlemen, if you want to restore confidence in this system and restore the integrity of research to where it belongs, then you need to take away some of the marbles here. We will not miss them. In my filed testimony, I urge you to sharply restrict flaky accounting or energy contracts like mark-to-market accounting or fair value accounting for marginal assets. These do not pass the laugh test on Wall Street anymore. You get no credit for them at all.

I would urge you to consider deleveraging these special purpose entities out there from their very absurd levels right now. This is clearly an abuse out there. Enron's deals were basically very shaky

LBOs, which were done at the equity investors' risk position. They were recourse to the parent there. And I would also urge you to review and reform the very highly compromised investment banking research conflicts which have had such tragic investing consequences with not only Enron but in the stock market at large. Thank you very much.

[The prepared statement of John Olson follows:]

INSERT OFFSET FOLIOS 1 TO 4 HERE

Mr. GREENWOOD. The Chair thanks the gentleman for your very excellent testimony. Before I recognize Mr. Bauer, I want to inform the subcommittee of some important matters relating to his testimony. First, Mr. Bauer is here to discuss his knowledge of and involvement in the Chewco transaction for which he served as the principal Andersen audit partner. He was not involved in the LJM transactions, which are the foci of our investigation today, and thus he is not in a position to answer questions relating to those transactions on behalf of Andersen.

Accordingly, I would encourage members to keep their questions to Mr. Bauer focused on Chewco rather than on LJM or any other broader accounting issues or policies that I know the members would like to ask about. We will address those issues at a later hearing.

Second, Mr. Bauer has cooperated fully and voluntarily with this committee with respect to the provision of documents and was interviewed by committee staff for more than 3 hours. Mr. Bauer is here, pursuant to subpoena, however, because he is not in a position to voluntarily testify about matters relating to his client, Enron, without its consent. We welcome him today, and we thank him for his testimony.

With that, Mr. Bauer, I now recognize you for 5 minutes for an opening statement, sir.

TESTIMONY OF THOMAS H. BAUER

Mr. BAUER. Thank you, Mr. Chairman. Good morning, Chairman Greenwood, Representative Deutsch, Chairman Tauzin, Representative Dingell and members of the subcommittee and full committee. I am Tom Bauer. I am a partner at Andersen, where I have worked since 1974. I am appearing today at the request of the subcommittee to discuss the accounting issues associated with the Chewco transaction.

It recently has become clear that in 1997, when the Chewco transaction was conceived, Enron withheld information from me and misled me on the accounting issues related to Chewco. I knew nothing of this at the time. I was told I had been provided with all relevant documentation in Enron's possession. Had the information that was withheld been timely provided to me in 1997 when I requested it, the accounting advice and opinion of Andersen would have been different.

Let me describe the background. In 1993, an Enron subsidiary and CalPERS formed an investment partnership known as JEDI. Because JEDI was a 50/50 partnership between Enron and CalPERS, Enron appropriately did not consolidate JEDI for financial reporting purposes.

In late 1997, Ben Glisan of Enron, contacted me to discuss the accounting for a transaction that Enron was entering into. Mr. Glisan is an able accountant, who at the time was thoroughly familiar with the accounting rules governing special purpose entities. He told me CalPERS' limited partnership interest in JEDI would be acquired by an entity called Chewco Investments, LLP. In our discussion, Mr. Glisan told me that Chewco would be structured as a special purpose entity so that it would qualify for non-consolidation. Mr. Glisan also told me that an Enron employee, who I later

learned was Michael Kopper, would have a very small interest in Chewco.

I reminded Mr. Glisan that for Chewco to qualify for non-consolidation, as he proposed, two tests had to be met. First, at least 3 percent of its capitalization had to be at-risk and attributable to entities independent of Enron. Second, neither Enron nor a related party of Enron, such as an employee, could control Chewco. Mr. Glisan assured me that Chewco would have 3 percent independent equity and would not be controlled by Enron or an Enron employee.

As the transaction unfolded, Mr. Glisan told me that Chewco's independent equity would come from two sources. First, he said that a large financial institution independent of Enron would make a large equity contribution. I later understood this large financial institution to be Barclays. According to Mr. Glisan, the second component of Chewco's third party equity would come from wealthy individual investors, who, with the exception of Mr. Kopper, would be independent of Enron.

I requested that Mr. Glisan provide Andersen with all documentation in its possession relating to the transaction. He told me he would do so, and he thereafter provided pertinent documents to me. Enron senior officials also confirmed in writing that I had been given all documentation they had. In my written statement, I list some of the documents I received.

The transaction documents and Enron board minutes I reviewed corroborated the representations I had received from Mr. Glisan and Enron. The documents described an $11.4 million independent equity infusion into Chewco, which represented 3 percent of Chewco's capitalization. Also, the documents described and represented that Chewco was not affiliated with Enron. Thus, in 1997, based on what I was told and what I reviewed, Chewco appeared to meet the criteria for a non-consolidated special purpose entity.

Roughly 4 years later, on October 26, 2001, two Enron accounting employees called me to discuss concerns that had recently arisen about Chewco. On November 2, 2001, Andersen received a set of Chewco documents gathered by the Special Committee of Enron's Board of Directors. When I reviewed these materials, I was appalled to discover a document I had never seen before—a two-page side agreement between JEDI and Chewco amending their 1997 loan agreement. The side agreement was dated December 30, the very same day the loan agreement between JEDI and Chewco was signed. As I mentioned previously, Enron gave me the loan agreement during the 1997 audit. They did not reveal the existence of the contemporaneous side agreement.

The Side Agreement materially altered the accounting treatment of Chewco. By itself, it caused Chewco to fail to qualify as an unconsolidated special purpose entity. Under the side agreement, JEDI was directed to deposit $6.58 million into reserve accounts created for Barclays' benefit at entities known as Big River and Little River. Barclays' $11.4 million equity infusion in Chewco appears to be conditioned upon the receipt of the $6.58 million from JEDI. This means that the independent at-risk equity in Chewco was not $11.4 million as represented, but rather much less, and significantly below the 3 percent necessary for non-consolidation.

The undisclosed side agreement meant that Chewco's and JEDI's financial statements should have been consolidated with Enron's since 1997. I do not know why this critical side agreement was withheld from me in 1997. I do not know who made the apparent decision to mislead Andersen and me. Had Andersen, in 1997, been provided the materials that I received in November 2001, there is no way I would have permitted Chewco to be treated as an unconsolidated special purpose entity, and a significant portion of the November 2001 restatement would have been avoided.

Mr. Chairman, I hope the information I have provided is helpful to the committee's inquiry, and I am here to answer any questions that the committee may have. Thank you.

[The prepared statement of Thomas H. Bauer follows:]

PREPARED STATEMENT OF THOMAS H. BAUER, PARTNER, ANDERSEN LLP

Good morning, Chairman Greenwood, Representative Deutsch, Chairman Tauzin, Representative Dingell, and members of the Subcommittee and full Committee. I am Tom Bauer. I am a partner at Andersen, where I have worked since 1974. I am appearing today at the request of the Subcommittee to discuss the accounting issues associated with the Chewco transaction.

By way of background, I grew up in Western Pennsylvania and attended college at Indiana University of Pennsylvania, where I received a bachelor's degree with a major in accounting in 1974. After graduating from college, I began my career with Andersen and have been with the firm ever since. I became a partner in 1986. In 1995, I joined the Enron audit engagement.

I understand this hearing will focus on several transactions involving Special Purpose Entities. This morning I will discuss the Chewco transaction, with which I am familiar.

It recently has become clear that, in 1997, when the Chewco transaction was conceived, Enron withheld information from and misled me on the accounting issues related to Chewco. I knew nothing of this at the time. I was told I had been provided with all relevant documentation in Enron's possession. Had the information that was withheld been timely provided to me in 1997, when I requested it, the accounting advice and opinion of Andersen would have been different and the major part of the restatement that occurred in November 2001 would have been unnecessary.

Let me describe the background. In 1993, an Enron subsidiary and CalPERS formed a partnership known as Joint Energy Development Investments. It was called JEDI for short. JEDI invested in energy-related securities and other investments. It was a very successful investment. Because JEDI was a 50-50 partnership between Enron and CalPERS, Enron appropriately did not consolidate JEDI for financial reporting purposes. These events occurred before I became involved with auditing Enron.

In late 1997, Ben Glisan, the Enron transaction support employee with principal responsibility for accounting matters in the Chewco transaction, contacted me to discuss the accounting for a transaction that Enron was entering into. Mr. Glisan is an able accountant, who at the time was thoroughly familiar with the accounting rules governing Special Purpose Entities. He told me CalPERS' limited partnership interest in JEDI would be acquired for approximately $300 million by an entity called Chewco Investments, LLP. In our discussion, Mr. Glisan told me that Chewco would be structured as a Special Purpose Entity so that it would qualify for non-consolidation. Mr. Glisan also told me that an Enron employee, who I later learned was Michael Kopper, would have a very small interest in Chewco. He also said Enron was considering guaranteeing a loan that would finance a substantial portion of the transaction.

I reminded Mr. Glisan that for Chewco to qualify for non-consolidation, as he proposed, two tests had to be met. First, at least 3 percent of its capitalization had to be at-risk and attributable to entities independent of Enron. Second, neither Enron nor a related party of Enron, such as an employee, could control Chewco. I confirmed this advice with Andersen's Professional Standards Group in Chicago. Mr. Glisan assured me that Chewco would have 3 percent independent equity and would not be controlled by Enron or an Enron employee.

As the transaction unfolded, Mr. Glisan told me that Chewco's independent equity would come from two sources. First, he said that a large financial institution inde-

pendent of Enron would make a large equity contribution. I later understood this large financial institution to be Barclays. According to Mr. Glisan, the second component of Chewco's third party equity would come from wealthy individual investors, who, with the exception of Mr. Kopper, would be independent of Enron.

I requested that Mr. Glisan provide Andersen with all documentation in its possession relating to the transaction. He told me he would do so and he thereafter provided pertinent documents to me. Enron senior officials also confirmed in writing that I had been given all documentation they had. In this connection, I reviewed:

- minutes of Enron's Executive Committee of the Board of Directors approving the transaction;
- the $132 million loan agreement between JEDI and Chewco;
- Enron's guarantee agreement of a $240 million loan from Barclays to Chewco;
- the amended JEDI partnership agreement; and
- a representation letter from Enron and a representation letter from JEDI, each of which stated that related party transactions had been disclosed and that all financial records and related data had been made available to Andersen.

I also requested that I be provided documents relating to Chewco's formation and structure. Mr. Glisan told me that Enron did not have these documents and could not obtain them because Chewco was a third party with its own legal counsel and ownership independent of Enron. I did not view this as unusual. Quite frequently an auditor does not receive documents from a third party who is represented as being independent. Andersen did send and received a confirmation regarding the loan agreement from the Chewco representative.

The transaction documents and Enron board minutes I reviewed relating to Chewco corroborated the representations I had received from Mr. Glisan and Enron. The documents described an $11.4 million independent equity infusion into Chewco, which represented 3 percent of Chewco's capitalization. Also, the documents described and represented that Chewco was "not affiliated" with Enron. Thus, in 1997, based on what I was told and what I reviewed, Chewco appeared to meet the criteria for a non-consolidated Special Purpose Entity.

Roughly four years later, on October 26, 2001, two Enron accounting employees called me to discuss concerns that had recently arisen about the sufficiency of Chewco's independent equity. On November 2, 2001, Andersen received a set of Chewco documents gathered by the Special Committee of Enron's Board of Directors. When I reviewed these materials, I was appalled to discover a document I had never seen before—a two-page Side Agreement between JEDI and Chewco amending their 1997 loan agreement. The Side Agreement was dated December 30, 1997, the very same day that the loan agreement between JEDI and Chewco was signed. As I mentioned previously, Enron showed me and gave me the loan agreement during the 1997 audit. They did not show me or tell me about or reveal the existence of the contemporaneous Side Agreement. The same individuals who signed the loan agreement also signed the Side Agreement.

The Side Agreement materially altered the accounting treatment of Chewco. By itself, it caused Chewco to fail to qualify as an unconsolidated Special Purpose Entity. Under the Side Agreement, JEDI was directed to deposit $6.58 million into reserve accounts created for Barclays' benefit at entities known as Big River and Little River. Barclays' $11.4 million equity infusion in Chewco appears to be conditioned upon the receipt of the $6.58 million from JEDI. This means that the independent at-risk equity in Chewco was not $11.4 million as represented, but rather much less, and significantly below the 3 percent necessary for non-consolidation.

The undisclosed Side Agreement meant that Chewco's and JEDI's financial statements should have been consolidated with Enron's since 1997. I do not know why this critical Side Agreement was withheld from me in 1997. I do not know who made the apparent decision to mislead Andersen and me. Had Andersen, in 1997, been provided the materials that I received in November 2001, there is no way I would have permitted Chewco to be treated as an unconsolidated Special Purpose Entity, and a significant portion of the November 2001 restatement would have been avoided.

In addition, other documents provided to me for the first time in November 2001 raised other accounting issues. Had I known this information in 1997, I also would have modified my conclusions and opinions relating to Chewco.

Mr. Chairman, I hope the information I have provided is helpful to the Committee's inquiry. I am here to answer any questions that the Committee may have.

Mr. GREENWOOD. It was very helpful, Mr. Bauer, and we thank you for being with us this morning for your testimony.

Mr. McMahon, you are recognized for 5 minutes for an opening statement, sir.

TESTIMONY OF JEFFREY MCMAHON

Mr. MCMAHON. Thank you, Mr. Chairman. Good afternoon. Mr. Chairman and members of the committee, my name is Jeff McMahon. I am currently the president and chief operating officer of Enron Corp. I have been an employee of Enron since 1994. From late October of last year until last week, I served as chief financial officer of the company. Before that I was president and chief executive officer of Enron's Industrial Markets Group. From 1998 until March 2000, I was the treasurer of Enron Corp. And before that I served as chief financial officer of its European operations.

As the committee knows, I was named as president and chief operating officer just last week, at the same time that Stephen Cooper was named the new interim chief executive officer and chief restructuring officer of the company. As part of the new management team at Enron, my focus is on the future—the future of our business, the future of our nearly 20,000 employees worldwide who are looking for continued employment with the company, the future of our over 8,000 retirees, who are looking for continued retirement benefits from the company, and various other stakeholders, including our creditors, who have an interest in Enron's future.

Working closely with the board of directors and the Creditors Committee, we are developing a restructuring plan designed to bring the company out of bankruptcy and preserve value for the company;s creditors, its employees and its stakeholders. I believe that Enron can emerge from bankruptcy by returning to its roots. As Mr. Cooper has expressed last week, our reorganized business will be dedicated primarily to the transmission of natural gas and the generation of electricity.

With respect to the issues the committee is examining, as the Chairman knows, I have been meeting and fully cooperating with the committee's staff and welcome today's opportunity to answer, to the best of my ability, questions the committee may have about the past events at Enron or our future direction. Thank you, Mr. Chairman.

[The prepared statement of Jeffrey McMahon follows:]

PREPARED STATEMENT OF JEFF MCMAHON, PRESIDENT AND CHIEF OPERATING OFFICER, ENRON CORPORATION

Good morning. Mr. Chairman and Members of the committee, my name is Jeff McMahon. I am President and Chief Operating Officer of Enron. I have been an employee of Enron since 1994. From late October of last year until this past week, I served as Chief Financial Officer of the company. Before that I was Chairman and Chief Executive Officer of Enron's Industrial Markets Group. From 1998 until March 2000 I was Treasurer of the company. Before that I served as Chief Financial Officer of European Operations.

As the committee knows, I was named as President and COO just last week, at the same time that Stephen Cooper was named the new interim Chief Executive Officer of the company. As part of the new management team at Enron, my focus is on the future of Enron, our nearly 20,000 employees worldwide, our over 8,000 retirees and various stakeholders. Working closely with the Board of Directors and the Creditors Committee, we are developing a restructuring plan designed to bring the company out of bankruptcy and preserve value for the company's creditors, its employees and shareholders.

I believe that Enron can emerge from bankruptcy by returning to its roots. As Mr. Cooper expressed last week, our reorganized business will be dedicated to the movement of natural gas and the generation of electricity.

With respect to the issues the committee is examining, as the Chairman knows, I have been meeting and fully cooperating with the committee's staff, and welcome the opportunity today presents to answer any questions the committee may have about the past events at Enron or our future direction.

Thank you, Mr. Chairman.

Mr. GREENWOOD. Thank you, Mr. McMahon.

Mr. Mintz, good morning. You are recognized—good afternoon—for 5 minutes for your opening statement.

TESTIMONY OF JORDAN H. MINTZ

Mr. MINTZ. Thank you, Mr. Chairman.

Mr. GREENWOOD. You might want to pull that right up; it is fairly directional. Thank you.

Mr. MINTZ. Good afternoon, Mr. Chairman and members of the committee. My name is Jordan Mintz. I have served as Enron's vice president and general counsel for Corporate Development since November of 2001. Between October 2000 and November 2001, I was vice president and general counsel for Global Finance. The 4 years prior, I served as vice president for Tax for Enron North America, formerly Enron Capital and Trade Resources.

Mr. Chairman, as you know, I am appearing this afternoon voluntarily and have, to date, fully and freely cooperated with the committee in its investigation. I intend to continue to do so. I welcome the opportunity this hearing presents for the committee to hear directly from me concerning the relevant facts related to my role at Enron.

Mr. Chairman, I will be glad to answer any questions you or any other members of the committee may have. Thank you, Mr. Chairman.

[The prepared statement of Jordan H. Mintz follows:]

PREPARED STATEMENT OF JORDAN H. MINTZ, VICE PRESIDENT AND GENERAL COUNSEL FOR CORPORATE DEVELOPMENT, ENRON CORPORATION

Good morning. Mr. Chairman and Members of the committee, my name is Jordan Mintz. Since November 2001, I have served as Enron's Vice President and General Counsel for Corporate Development. Between October 2000 and November of last year, I was Vice President and General Counsel for Enron Global Finance. The four years prior, I served as Vice President for Tax at Enron North America, formerly Enron Capital and Trade.

Mr. Chairman, as you know, I am appearing this morning voluntarily and have, to date, fully and freely cooperated with the committee in its investigation. I intend to continue to do so. I welcome the opportunity this morning's hearing presents for the committee to hear directly from me concerning the relevant facts related to my role at Enron.

Mr. Chairman, I will be glad to answer any questions you or any other members of the committee may have.

Thank you, Mr. Chairman.

Mr. GREENWOOD. Thank you, Mr. Mintz. The Chair recognizes himself for 5 minutes for purpose of inquiry, and let me start with you, Mr. McMahon, if I may.

In 1999, you were the treasurer of Enron's Global Finance Group. At that time, Andy Fastow, Michael Kopper, Ben Glisan, Ann Yaeger, Trushar Patel and Kathy Lynn also worked there. Would you please explain why the Global Finance Group existed

and what its top officers, particularly Fastow, Kopper and Glisan, what they did there, what their roles were?

Mr. MCMAHON. At that point in time, the Global Finance Department of Enron existed for several purposes. One portion of it, which I ran at the time as the treasurer, was to maintain adequate liquidity of the company for its ongoing businesses. A separate function—and I reported at the time to Andrew Fastow who was the CFO. At the same time, there was a separate group, also reporting to Mr. Fastow that was headed by Michael Kopper, which was essentially a Special Projects Group. And that group was responsible for various finance activities that were—my understanding were at the direction of Mr. Fastow. And the individuals you named all fell under Mr. Kopper's organization at that point in time, I believe.

Mr. GREENWOOD. Would you describe your efforts to develop a private equity fund at Enron and why Enron wanted to develop the fund?

Mr. MCMAHON. Yes. In approximately mid-1999, we identified an area where we thought we could add some efficiency to the finance activities of the company by seeing if we could get third party, unrelated, private equity funds to commit some capital to some future transactions that Enron may want to undertake with these third parties. So at that point in time, we had engaged or hired some outside individual to come and join Enron for the purpose of trying to go into the private equity markets and see if we could create some private equity liquidity for third parties.

Mr. GREENWOOD. At some point, Andy Fastow told you that he was going to develop a private equity fund and that Michael Kopper was going to be the lead man on the project. When was that conversation, and tell the committee about that conversation.

Mr. MCMAHON. I believe the timing of that was somewhere around mid-1999, maybe slightly before that. But the individual I just alluded to who we hired to bring to Enron to go do that, prior to his starting with the organization, Mr. Fastow informed me that he had changed his mind, he did not want this new employee to do that; in fact, he wanted Mr. Kopper to do that in his Special Projects Group.

Mr. GREENWOOD. Now, ultimately, Fastow's Private Equity Group was formed under the name LJM. What does that name stand for?

Mr. MCMAHON. I believe those are initials of his wife and two children.

Mr. GREENWOOD. And when did you first learn that Fastow had a personal equity interest in the fund?

Mr. MCMAHON. I learned of his ownership of the general partner of LJM I believe, again, around mid-1999 when I was present at what I believe——

Mr. GREENWOOD. How did you react to that, when you learned that? And how did you react to the fact that you hadn't known this all along?

Mr. MCMAHON. Well, I was at the Finance Committee meeting when it was presented to the Finance Committee. I was surprised——

Mr. GREENWOOD. By whom was it presented?

Mr. MCMAHON. It was presented by Mr. Fastow.
Mr. GREENWOOD. Mr. Fastow announced this.
Mr. MCMAHON. Yes.
Mr. GREENWOOD. And you were taken by surprise.
Mr. MCMAHON. Well, I think at the time he announced it, I was taken by surprise of the fact that the board was ultimately recommending—or was asked to recommend to waive their code of conduct.
Mr. GREENWOOD. What was your reaction to that? Were you comfortable with that?
Mr. MCMAHON. I am sorry?
Mr. GREENWOOD. Were you comfortable with that?
Mr. MCMAHON. I don't know if that was a decision that I would have made at the time, but I was not party to the board deliberations.
Mr. GREENWOOD. Did you think it was appropriate?
Mr. MCMAHON. Again, I am not so sure that would be the same decision I would have made at the time.
Mr. GREENWOOD. Did you see any problems with the chief financial officer having an equity interest in a privately held fund that does business with its own company?
Mr. MCMAHON. I think it is pretty clear that is an obvious conflict of interest for a senior officer——
Mr. GREENWOOD. Was it clear to you at the time?
Mr. MCMAHON. That there was a conflict of interest?
Mr. GREENWOOD. Right.
Mr. MCMAHON. Yes.
Mr. GREENWOOD. So alarm bells went off in your head?
Mr. MCMAHON. Well, at the time, it was unclear exactly what this partnership would evolve into, so it was a conflict that clearly existed, and I think everyone who saw it realized it.
Mr. GREENWOOD. Did you say so at the time?
Mr. MCMAHON. At the time, I was at the board meeting and heard about the conflict but didn't realize the size of the partnership as it would evolve to.
Mr. GREENWOOD. My time has expired. The Chair recognizes the gentleman from Florida, Mr. Deutsch.
Mr. DEUTSCH. Thank you, Mr. Chairman. As I mentioned in my opening statement, I am going to try to understand just one of the, again, thousands of partnerships: the LJM/Rhythms transactions. You are in charge now. In looking at this partnership and what occurred in terms of basically buying the put from yourself, I mean is there any legitimate business purpose in hindsight that someone could defend this partnership?
Mr. MCMAHON. You are asking me the question?
Mr. DEUTSCH. Any of you, but Mr. McMahon?
Mr. MCMAHON. Frankly, I am not very familiar with the details of that, so it is hard for me to tell you what the business reason was at the time.
Mr. DEUTSCH. Well, again, I went through it in the opening statement. Enron had stock in Rhythms that they had bought at IPO for $10 million. The value after the IPO was, I guess, close to $400 million. So they wanted to lock in the gains, so they wanted to buy a put, right? So they, basically—and Fastow was CFO at the

time, he was general partner of LJM, and, basically, Enron bought a put, actually not even from LJM but from a swap sub that LJM created, all right? This was capitalized by shares of Enron stock. And what happened was, and this, again, where I use the word and I use it very seriously, on March 8 of last year, because Rhythms—basically, the $400 million, which it was—when it was $400 million, when the put was bought, that $400 million gain was booked on Enron's balance statement as a gain, right? So if someone was looking at Enron's balance statement, they would see a gain.

Well, first all, where is the arms-length transaction, because could anyone reasonably assume that this entity could in fact ever make good on the put? In other words, this was Enron basically buying a put from itself, and, again, as I had mentioned, Fastow immediately took a general partnership share in the millions of dollars from LJM. Mr. Olson, do you want to respond? I mean is there anyone who can defend what occurred here?

I mean this looks like fraud, and, I guess, let me just mention, on March 8 of last year, because the value had gone down so much, that Enron transferred 3.1 million shares without any consideration at all, zip, nothing, gave it, about $150 million on Enron stock to the partnership, because the partnership at that point was undercapitalized. What ended up happening in this whole—and, again, if you look at the transaction in the hindsight we have now, the only purpose was to lock in the gain on the balance sheet, and then at that point, someone who wanted to—and that is our whole point—wanted to understand what was going to go on could not.

And I look at this transaction, obviously in hindsight, that I cannot come up with any legitimate business purpose for this transaction, that it was in fact set up as a fraud, as a fraud for someone in here, and we still don't know who the limited partners are. We have not been able to obtain that information at this date. Our staff does not—I mean there is a question that $15 million, which is the 3 percent, which was transferred, then some other activity occurred, because, actually, this entity didn't have the 3 percent. But we don't even know if this $15 million ended up being lost. Mr. Olson?

Mr. OLSON. In my opinion, as a securities analyst, there is no meaningful business purpose behind this particular situation. I was obviously not aware, this is the first time I have seen it described as such. They were essentially gaming in their own stock. I recall the word on the street, anecdotal evidence, was that they had done fair value accounting on this in order to shield some other losses or reserves that they had taken the prior year on an oil and gas loan portfolio. And they were trying to preserve this.

Mr. DEUTSCH. Okay. Is this fraud?

Mr. OLSON. I am not qualified to tell you; I am not a lawyer.

Mr. DEUTSCH. If you are an analyst and you knew that this was going on, what would have happened to the stock in the marketplace?

Mr. OLSON. I think the stock would have cratered immediately.

Mr. DEUTSCH. And that is what should have happened.

Mr. OLSON. It was never disclosed.

Mr. DEUTSCH. And that is the illegal activity too, because it was never disclosed, and this becomes an issue on the 8K. This is an

extraordinary, an extra ordinary business event. Enron transferred $150 million to an entity without any consideration. That was on March 8. On March 22, what Enron then did is basically they realized that this entity could never make good on the put and so the deal was off. And at that point is when the restatement occurred. I mean and maybe, Mr. Bauer—I mean why was that not recorded as an extra ordinary event?

Mr. BAUER. Congressman, I am not familiar with the transaction. That was not my area of the Enron audit, sorry.

Mr. DEUTSCH. I mean I see my time has expired, but this is one of 4,000 partnerships.

Mr. STEARNS. I thank the gentleman. The gentleman's time has expired. The full chairman of the committee, Mr. Tauzin, recognized.

Chairman TAUZIN. Thank you, Mr. Chairman. I think it is important to note that our investigators have discovered that while that was not being disclosed while this deal was put together, Mr. Skilling, who will testify later, in the same period of time sold Enron stock at a price of between $2.3 million and $2.7 million. So while this deal was inflating the value of Enron stock, Mr. Skilling was profiting in the marketplace, when others, who might have known about problems with this deal, might have recommended a sell.

We have limited time, but I want to try to take all of you through this quickly. One of the questions that has troubled me from the beginning of this investigation is why on Earth investment bankers couldn't see what was going on. And, Mr. Olson, you kind of tell the story, don't you, that Enron is basically saying, "You are either our friend or you are not. Your rate us down, we don't do business with you." You got a call from a CEO of Enron. Who was that, by the way?

Mr. OLSON. That was Mr. Lay.

Chairman TAUZIN. Mr. Lay called you.

Mr. OLSON. Yes. I had called him.

Chairman TAUZIN. And he said, "We are going to deal with our friends," right?

Mr. OLSON. Yes.

Chairman TAUZIN. And then he went through a litany of all the unfriendly comments you made about Enron, right?

Mr. OLSON. Well, the relative lack of enthusiasm, I should say.

Chairman TAUZIN. The lack of friendship.

Mr. OLSON. Yes.

Chairman TAUZIN. And Mr. McMahon, you actually gave us instances where, surprise, surprise, bankers called you up. Here we got a call from Rob First, the Managing Director of Merril Lynch, asking if it is okay for members of Merril Lynch to invest in LJM2, whether you thought that was a conflict of interest. You told him it was, right?

Mr. MCMAHON. Correct.

Chairman TAUZIN. And who called you to complain about that?

Mr. MCMAHON. About my response to Mr. First?

Chairman TAUZIN. Yes.

Mr. MCMAHON. Mr. Fastow.

Chairman TAUZIN. Oh, yes. What did he tell you, "You are messing in my deals here," right?

Mr. MCMAHON. He told me that I was jeopardizing the LJM2 fund-raising exercise.

Chairman TAUZIN. Yes. He was trying to raise money for these bankers, and the bankers are calling you to find out if they can invest, and you are saying, "That is a conflict of interest." And Fastow is calling you to say, "Don't you dare tell them that. I want their money." And in fact you got a call from Paul Riddle with the First Union Bank saying that he was told he would get the next bond deal if he invested, right?

Mr. MCMAHON. Yes. The banks really had two different camps after the fund-raising exercise. One was people who expected deals in the future because of investing and others who were concerned that——

Chairman TAUZIN. And Mark DeVito with Merril Lynch Banker, same kind of call, right?

Mr. MCMAHON. That is correct.

Chairman TAUZIN. Did that shock you, that they were being offered these special bond deals and the next bond deal if they made these investments? These are the people analyzing the stock and telling people whether to buy or not, right? And investing, right?

Mr. MCMAHON. Well, the individuals I spoke to were typically on the bond side of the house rather than the analyst side.

Chairman TAUZIN. The bond side/investment side. But, Mr. Olson, this is what you are talking about. You are basically talking about the incestuous relationship between—what do we call it now, synergy, we call it synergy between the investment bankers who tell people whether or not this is a good place to invest who themselves in it, and the deals they are getting, the good relationships they are getting with Enron are chances to invest in these partnerships, is that right?

Mr. OLSON. Investment bankers are not the friends of securities analysts.

Chairman TAUZIN. I want to turn to you quickly. First of all, Mr. Bauer, let me make sure I understand what you are saying. You are telling us that the deal that brought down the house of cards, the Chewco deal, did not meet accounting standards as you understood them. It didn't meet it because of a side agreement you were not shown; is that correct?

Mr. BAUER. Congressman, I don't know if that is the entity that brought down the house of cards, but in response to your question, I do believe I was not——

Chairman TAUZIN. Well, let us see if it was.

Mr. BAUER. Okay.

Chairman TAUZIN. The failure of Chewco to meet the accounting standards, that 3 percent rule, investment rule, because of the JEDI investment?

Mr. BAUER. Yes, sir.

Chairman TAUZIN. That literally caused Enron to restate its earnings and to declare debt that had been off its books, right?

Mr. BAUER. That is correct, sir.

Chairman TAUZIN. That started the whole tumble, didn't it?

Mr. BAUER. Yes, sir.

Chairman TAUZIN. Now, and you are telling us——

Mr. BAUER. In conjunction with some other——

Chairman TAUZIN. [continuing] it was a side agreement that was not shown to you that literally made that deal a violation of accounting standards, right?

Mr. BAUER. Yes, sir.

Chairman TAUZIN. All right. I want to quickly turn to you, Mr. Mintz, then we will come back later. But your story to us is a struggle. Your story to us is a—just like Mr. McMahon who goes to Mr. Skilling and tells him, "You know, I think there is conflicts of interest, you have got all kinds of problems here. You have got to reassign Mr. McMahon to a new job as a result of all that." And you got some angry calls from Mr. Fastow, according to what you tell us. Mr. Mintz, yours was a struggle to get Mr. Skilling to do a simple thing, and that was to sign the documents approving these deals. Why didn't he sign them?

Mr. MINTZ. I don't know, Mr. Chairman.

Chairman TAUZIN. How long did you try to get him to sign them?

Mr. MINTZ. I sent him a memo in mid-May 2001 and gave him about a week to respond. I didn't hear from him. I asked my secretary to call his secretary to see if I could get on his schedule within 3 days. She didn't return the calls. Maybe I let another 4 or 5 days pass. I asked my secretary to make a call again, and no response.

Chairman TAUZIN. Yours is a story of a constant struggle to force Enron to do what it should have done, and that is document a fair arms-length transaction with these partnerships offering these deals to other companies or other people first to make sure it was in the best interest of Enron, to document the lack of conflict of interest, to document that the Audit Committee was reviewing this. And I am looking at one of those sheets that Mr. Skilling wouldn't sign. I am looking at the bottom. It is an interesting one. It says, Mr. Kopper, employee of Enron, who never got a waiver, is negotiating the deal for LJM2. It says that he has been cleared, and I don't think he was, so that is a kind of interesting point.

But at the very end of it, the very end of it, there is a question: Has the Audit Committee of Enron Corporation Board of Directors reviewed all Enron/LJM transactions within the past 12 months? On that form, you have checked off, "no." Have all recommendations of the Audit Committee relative to Enron/LJM transactions been taken into account in this transaction? The box that is checked off, "no." And then what follows is very interesting. Audit Committee has not reviewed any transactions to date. Was that the reason Mr. Skilling wouldn't sign this document, do you think, because it was an admission that the Audit Committee was not asked to review, had not reviewed any of these deals?

Mr. MINTZ. I don't know.

Chairman TAUZIN. You don't know.

Mr. MINTZ. I just don't know, Mr. Chairman.

Chairman TAUZIN. But he wouldn't sign it, would he? In fact, if we look at the last page, everybody signed. On January 5, everybody signed except one person, the guy in charge, the guy who should have been either approving or disapproving, the guy who should have been sure that the Audit Committee was reviewing

these deals, the guy you tried to get to sign who would never sign, who will be before this committee in just a little while. Is that correct, sir?

Mr. MINTZ. Yes.

Chairman TAUZIN. Thank you, sir.

Mr. STEARNS. The gentleman's time has expired. Mr. Stupak's recognized.

Mr. STUPAK. Thank you, Mr. Chairman. I want to pick up where Mr. Mintz—where Chairman Tauzin left off. Isn't it true in June of 2001 you hired a law firm of Fried Frank to investigate and evaluate the propriety of the LJM transactions and agreed to pay them as much as $620 an hour?

Mr. MINTZ. Congressman, if I recall correctly, I engaged them the month before in May, Fried Frank.

Mr. STUPAK. So you hired an outside firm in May of 2001.

Mr. MINTZ. Yes, sir.

Mr. STUPAK. All right. Why did you decide to go outside your corporate counsel? Wasn't Vinson & Elkins your law firm?

Mr. MINTZ. One of the firms we use regularly, that is correct.

Mr. STUPAK. Well, why did you decide to go outside the law firm? Isn't Fried & Frank from New York—Fried Frank, I guess? Is that right?

Mr. MINTZ. New York office with a large presence in Washington, D.C.

Mr. STUPAK. But why did you go outside?

Mr. MINTZ. I came into the job at Global Finance in October 2000. Prior to that, I was a tax attorney for 18 years. I met with my predecessor for 2 days in making the transition. He brought me up to speed on what was going on, reviewed the employees in the Legal Department, et cetera, and never mentioned LJM; got into the office, opened up the files and a substantial amount of documentation, deal approval sheets that Chairman Tauzin was referring to——

Mr. STUPAK. Right. Were all there.

Mr. MINTZ. Were all there.

Mr. STUPAK. Made you nervous.

Mr. MINTZ. Well, very quickly, I was also down on the 20th floor, the Global Finance people were, and sort of meticulously, methodically, as a lawyer may do, I wanted to get my arms around what was going on. And over a period of time, as I performed my due diligence, I brought to the attention to certain members, senior members of the company concerns I had, and I went to Mr. Buy and Mr. Causey and met with them regularly and wrote them a memo about some of the problems I saw in the process and procedures associated with the LJM approval. I started meeting with our general counsel, Mr.——

Mr. STUPAK. Bottom line, you had some real concerns about the LJM transactions, right?

Mr. MINTZ. In April of 2001, Mr. Fastow announced that LJM was going to look to buy the Enron Wind Company, which was approximately a $600 million acquisition.

Mr. STUPAK. We all know that, but yes or no, you were uncomfortable what you were seeing with LJM.

Mr. MINTZ. I am sorry, that is correct.

Mr. STUPAK. All right. Bottom line, you really distrust—I will take the word ''really'' out of there—but did you distrust the service of the in-house counsel, and that is why you hired the outside counsel from New York to look at this, because you needed an objective opinion of what was going on?

Mr. MINTZ. I wanted somebody that had no linkage, no connections with the company and just to take a fresh look at everything.

Mr. STUPAK. I take it that is a yes answer to my question then.

Mr. MINTZ. Yes, sir.

Mr. STUPAK. Okay. Did they produce a report, anything in writing back to you as to their investigation, the law firm?

Mr. MINTZ. Yes, they did.

Mr. STUPAK. Where is it now, that report?

Mr. MINTZ. There are a number of copies in the company, and they have been turned over to a number of committees as well as the SEC and the FBI.

Mr. STUPAK. I am just—and once again, why didn't you hire Vinson & Elkins to do this, look at this work?

Mr. MINTZ. I was concerned about issues, I wanted to get somebody to look over my shoulders who just had no knowledge, no insight, no background regarding LJM.

Mr. STUPAK. Okay. Now, when you were looking at LJM, you consulted Mr. Jeffrey McMahon, did you not?

Mr. MINTZ. When I started my due diligence regarding LJM, I met with a number of different individuals who had some familiarity with them, and Jeff was one of them.

Mr. STUPAK. Okay. What was your impression? Did Mr. McMahon understand how Mr. Fastow could supervise Enron employees as chief financial officer while at the same time the same employees were negotiating against LJM on behalf of Enron? Would that issue come up?

Mr. MINTZ. As soon as I got down to the 20th floor, I saw a lot of dysfunctionality on that floor along the lines of what you are suggesting.

Mr. STUPAK. Well, dysfunctionality because you had some people at Enron, like Mr. Fastow and others, wearing two hats, trying to look out for LJM at the same time dealing with Enron, negotiating back and forth, basically wearing two hats, and causing real conflicts of interest and real ethical problems, does it not, within a corporation like Enron?

Mr. MINTZ. I think that is a fair assessment.

Mr. STUPAK. Okay. Did Mr. McMahon voice these concerns to you, and did he voice them with Mr. Skilling, if you know?

Mr. MINTZ. Jeff shared with me his concerns and his conversation with Mr. Skilling.

Mr. STUPAK. Is it true that Mr. Buy advised you not to stick your neck out by approaching Mr. Skilling with your concerns about LJM?

Mr. MINTZ. Well, I got with Mr. Causey, Mr. Buy when I wanted to approach Mr. Skilling about reviewing the documentation and making sure they were executed and finding out whether it was ministerial or not. And I also suggested maybe we should check with Mr. Skilling to make sure he is still comfortable with this ar-

rangement. And, yes, Mr. Causey said, "I wouldn't stick my neck out."

Mr. STUPAK. Mr. Causey said that——

Mr. MINTZ. Mr. Buy, I am sorry. I am sorry.

Mr. STUPAK. [continuing] or Mr. Buy said he wouldn't stick your neck out? Meaning if you went to Skilling you would be given a new job or something, like Mr. McMahon? Was that what they did at the corporation, when you didn't agree with the higher ups, they moved you out?

Mr. MINTZ. I can only speak for myself. I don't know what other people's experience was.

Mr. STUPAK. Well, it sounds like maybe they put you down on the 20th floor and you didn't want to go there, it is so dysfunctional you are telling me, right?

Mr. MINTZ. Well, as a former tax attorney, I was looking forward to the opportunity of being a real attorney.

Mr. STUPAK. But you took it as really sort of as a threat, if I went to Mr. Skilling, somehow there would be retribution, right?

Mr. MINTZ. Both Ricks shared with me that Jeff was very fond of Andy, don't go there.

Mr. GREENWOOD. The time of the gentleman has expired.

Mr. STUPAK. Mr. Chairman, thank you for your courtesy, but could I place the Fried Frank report in the record?

Mr. GREENWOOD. Without objection, that document will be incorporated in the record of the hearing.

And the Chair recognizes for 5 minutes the gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman. Mr. Mintz, I would like you to go to document number 22. It is a document that you wrote, and it is dated September 7, 2000 regarding the private placement memorandum for LJM3, a new proposal. Fastow's proposed new partnership that evidently ultimately never got off the ground. It seems that upon review of this PPM you were quite alarmed at some of the discussion in it about how Fastow's dual role at Enron and the partnership would accrue benefits to the partnerships' investors, particularly because of Fastow's insider status and knowledge of proprietary deal flows. What was your reaction to this PPM, and who did you discuss it with?

Mr. MINTZ. Congressman, I wasn't a securities lawyer, but on its face, when I had a chance to review the PPM and I saw the language that was being used in order to attract investors, I was concerned.

Mr. STEARNS. And what was your concern? Just give us a couple sentences.

Mr. MINTZ. It appeared that they were selling to investors inside information.

Mr. STEARNS. They were selling to investors inside information.

Mr. MINTZ. That this fund was effective because they had insights into particular assets of the company.

Mr. STEARNS. Did you feel also that there was any transparency? Was there a problem with transparency too?

Mr. MINTZ. I am sorry, I am not sure I understand.

Mr. STEARNS. In other words, was information being concealed?

Mr. MINTZ. I don't know.

Mr. STEARNS. Okay. Did you raise your concerns with Enron's in-house and outside security experts after you were aware of this, as you say, that you felt that it was not up and up?

Mr. MINTZ. I wanted to make sure that they were aware of it, and I wanted to get their guidance because they were the experts.

Mr. STEARNS. Mr. Mintz, what did they say exactly to you when you went to them, specifically?

Mr. MINTZ. There were some comments made regarding the reference of how the board waived the conflict under the code of conduct. And I passed that onto LJM's outside counsel.

Mr. STEARNS. You mentioned in your—just previously you mentioned insider information is what concerns you.

Mr. MINTZ. Well, it was the way——

Mr. STEARNS. Did they say to you that they agreed with you, that this was a case of insider information, which you voiced your concern?

Mr. MINTZ. Well, again, I wasn't the securities lawyer, so I was relying on their assessment. Their assessment was that this was familiar, it was similar to what was in LJM2. That was approved by the board, so they didn't take exception to it.

Mr. STEARNS. I have got the PPM for LJM2 here, and document number 11, if you could just pull that up. Page 3. Let me draw your attention to the top of the page: "The ability to evaluate investments with full knowledge of the assets due to their active involvement in the investment activities at Enron, the principals will be in an advantageous position to analyze potential investments for LJM2. The principals, as senior financial officers of Enron, will typically be familiar with the investment opportunities LJM2 considers." This is a key part. "The principals believe that their access to Enron's information pertaining to potential investments will contribute to superior returns."

Now, let me just go to page 7 here. Mr. Fastow is at the bottom of the page, dual role advantages. "Mr. Fastow will continue to hold the titles and responsibilities of executive vice president and chief financial officers of Enron and Messieurs Kopper and Glisan will continue to serve as senior financial officers of Enron, while acting as owners and managers of the general partner. As a result investors in the partnership should benefit from Mr. Fastow's and the other principals' due roles which will facilitate the partnership access to Enron deal flow. The principals' dual roles in managing the partnership while remaining employed as senior official officers at Enron, however, raises certain conflicts of interest that could affect the partnership.

Now, what you raised in LJM3 was already in place in LJM2, wouldn't you agree?

Mr. MINTZ. That is correct.

Mr. STEARNS. So the concerns you had on this LJM3, which did not get off the ground, were already replicated in the previous one.

Mr. MINTZ. That is correct.

Mr. STEARNS. And yet everybody signed off on LJM2 Mr. MINTZ. That is my understanding.

Mr. STEARNS. Mr. Olson, just maybe a quick comment on some of our discussion here. In terms of—I mean even Mr. Mintz had indicated that it was a problem. Would you mind giving your—based

upon what I read about LJM2 and based upon Mr. Mintz' memo on LJM3, was he right to ask the securities analyst to say, "What is wrong with this?"

Mr. OLSON. I am not sure I understand that he was asking a securities analyst to say, "What is wrong with this?"

Mr. STEARNS. Well, what he did is in his memo had some concern about LJM3, so he went to the securities lawyers and say, "Here are my concerns," and they came back and sort of didn't agree with him. And my question is to you, in your capacity, did you agree with Mr. Mintz about this development of this partnership?

Mr. OLSON. I would be very concerned, again, as a securities analyst. This is a blatant conflict of interest. Again, it would never have passed the smell test had it been publicly disclosed.

Mr. STEARNS. So Mr. Chairman, in conclusion, we have a blatant conflict of interest here on LJM3, and it is identical to LJM2, so what you are saying, Mr. Olson, would also apply to LJM2.

Mr. OLSON. Right.

Mr. GREENWOOD. The time of the gentleman has expired. The Chair recognizes the gentlelady from Colorado, Ms. DeGette, for 5 minutes.

Ms. DEGETTE. Thank you, Mr. Chairman. Mr. Mintz, in Mr. Winokur's testimony, his written testimony, he talks about the transaction approval process for deal approval sheets, or the DASHs, correct?

Mr. MINTZ. I haven't seen——

Ms. DEGETTE. You haven't seen it. Well, what he says is that the deal approval sheets set out the economic basis of significant transactions. It talks about the approvals at various levels, and it says that in the timeframe at issue for the LJM transactions, new business in an amount greater than $35 million required board approval, correct? Do you know that that was the policy?

Mr. MINTZ. That sounds generally like the policy. I know the thresholds change.

Ms. DEGETTE. I mean you wouldn't disagree that that was the policy, correct?

Mr. MINTZ. The threshold would change from time to time.

Ms. DEGETTE. Okay. If you take a look at exhibit 26 in your notebook, that is the LJM approval sheets that we have been talking about. Chairman Tauzin was talking about some, and Mr. Stearns. Those are the LJM approval sheets which were not signed, most of them, by Jeff Skilling, correct?

Mr. MINTZ. The first one I am looking at, that is correct.

Ms. DEGETTE. Now, you were very concerned that Mr. Skilling had not signed those sheets, correct?

Mr. MINTZ. From the beginning of the job, I was very concerned, as I did my due diligence, that the policies and procedures that the board had put in place weren't being——

Ms. DEGETTE. Now, wait a minute. You were concerned that Mr. Skilling had not signed the sheets, and in fact you tried to get him to sign the sheets from time to time, even writing him a memo.

Mr. MINTZ. That requirement was part of the policies and procedures.

Ms. DEGETTE. And you tried to get him to do it, yes or no?

Mr. MINTZ. That is correct.

Ms. DEGETTE. Thank you. And did Mr. Skilling ever sign the sheets, that you know of?

Mr. MINTZ. I don't think so.

Ms. DEGETTE. And do you know why he didn't sign the sheets?

Mr. MINTZ. I don't know.

Ms. DEGETTE. And did you ever go to any of the board members, Mr. Winokur or others, and tell them of your concerns, that Mr. Skilling had not signed these sheets?

Mr. MINTZ. I didn't, Congresswoman.

Ms. DEGETTE. Why not?

Mr. MINTZ. In an organization like Enron, I try to work within the system and report to people who are senior to me who I felt had the direct responsibilities with the board.

Ms. DEGETTE. Okay. Did you ever report to your people who were senior to you of your concerns that Mr. Skilling had not signed these sheets?

Mr. MINTZ. I did.

Ms. DEGETTE. Who was that?

Mr. MINTZ. It was Mr. Buy and Mr. Causey.

Ms. DEGETTE. Mr. Buy and Mr. Causey, you said, "I am concerned Mr. Skilling has not signed these sheets."

Mr. MINTZ. That is correct.

Ms. DEGETTE. What did they tell you they would do?

Mr. MINTZ. They told me to send a memo or get with Mr. Skilling and see if he wanted to get a whole packet of documents or——

Ms. DEGETTE. And you did send a memo, right?

Mr. MINTZ. Yes, Congresswoman.

Ms. DEGETTE. Did you get with Mr. Skilling?

Mr. MINTZ. I did not.

Ms. DEGETTE. Why not?

Mr. MINTZ. Mr. Skilling didn't respond to my memo. I then asked my assistant to call his secretary to see if I could get on his schedule, and made two calls——

Ms. DEGETTE. And you never got on his schedule. Did you then go back to your superiors and tell them Mr. Skilling never met with you or did you just drop it?

Mr. MINTZ. I just dropped it. I told——

Ms. DEGETTE. Thank you.

Mr. MINTZ. Yes.

Ms. DEGETTE. Now, you started in your current position in October——

Mr. GREENWOOD. Mr. Mintz, did you feel like you didn't get a chance to respond to that?

Mr. MINTZ. Yes. I had——

Ms. DEGETTE. Mr. Chairman, I would ask unanimous consent for an additional 30 seconds in that case——

Mr. GREENWOOD. You will have it, you will have it.

Ms. DEGETTE. [continuing] to finish my questioning. Thank you.

Mr. MINTZ. I did mention it to Mr. Causey and Mr. Buy.

Ms. DEGETTE. And what did they say they would do?

Mr. MINTZ. They said, "You tried and—"

Ms. DEGETTE. They said they would try to get him——

Mr. MINTZ. No, no. They said, "You tried, and leave it at that."

Ms. DEGETTE. So they said, "You tried, and oh well." And you took nothing further with it.

Mr. MINTZ. That is correct.

Ms. DEGETTE. Okay. Now, you started with your current position in October of 2000, correct?

Mr. MINTZ. Yes.

Ms. DEGETTE. And in December of 2000, you sent a memo to Rick Buy and to Mr. Causey about the LJM3 Limited Partnerships, kind of outlining the different criteria you thought would be important, right?

Mr. MINTZ. Well, I summarized what I had seen in the PPM for them.

Ms. DEGETTE. And you were concerned, weren't you, about issues of conflict of interest with—go ahead.

Mr. MINTZ. Again, I wasn't a securities attorney. I didn't deal with PPMs that often, but there were issues here that caught my eye that I thought people should be aware of.

Ms. DEGETTE. And those issues were what?

Mr. MINTZ. The sales pitch.

Ms. DEGETTE. And that was in December of 2000, right?

Mr. MINTZ. That is correct.

Ms. DEGETTE. And on March 8, 2000, exhibit 13 in your notebook, you sent another memo to Mr. Buy and Mr. Causey talking about the LJM approval process and talking about issues regarding Jeff Skilling and others—I am sorry, Mr. Fastow and Mr. Kopper having conflicts, correct?

Mr. MINTZ. I summarized my due diligence for Mr. Buy and Mr. Causey regarding——

Ms. DEGETTE. So during that period, October through, say, June, when you hired Fried Frank, you were concerned about conflicts of interests that Mr. Fastow and Kopper would have had.

Mr. MINTZ. I was concerned that the process and the procedures that had been put in place by the board weren't being adhered to to the level that I thought would substantiate arms-length dealing and fairness.

Ms. DEGETTE. And you talked to Mr. Buy and Mr. Causey about those concerns, correct?

Mr. MINTZ. That is correct.

Ms. DEGETTE. Did you ever bring those concerns to anyone on the board?

Mr. MINTZ. No, I didn't.

Mr. GREENWOOD. Time of the gentlelady has expired.

Ms. DEGETTE. Thank you.

Mr. GREENWOOD. The Chair recognizes the gentleman from North Carolina, Mr. Burr.

Mr. BURR. Mr. McMahon, Mr. Mintz, let me ask you a couple of quick questions, just yes or no. Either of you aware of any direction of Enron management for document destruction within Enron at any point?

Mr. MCMAHON. If I understand your question, is any direction related to document destruction?

Mr. BURR. Did any person within management at Enron instruct employees to destruct documents?

Mr. MCMAHON. No, quite the opposite. There were several e-mails sent out from our general counsel's office requesting people not to destroy certain types of documents and ultimately not to destroy any documents.

Mr. BURR. Mr. Mintz, you were general counsel, what actions did you take?

Mr. MINTZ. I made sure that the people in the Global Finance Group had received the e-mails that were sent out from our general counsel's office.

Mr. BURR. Those e-mails were dated 10-25, the first one, if I am correct. The SEC inquiry actually took place on October 17. Can either of you fill in what transpired within Enron management in those 8 days between the SEC inquiry and this decision to put out a document preservation memo?

Mr. MCMAHON. At the time, that would have been handled by the general counsel's office prior to my becoming CFO of the company, so I am not aware of what went on at that point in time.

Mr. BURR. Any light you can shed on that, Mr. Mintz?

Mr. MINTZ. No, Congressman.

Mr. BURR. Mr. Mintz, let me go back to your decision to hire outside counsel. I just need some clarification.

Mr. MINTZ. Yes, sir.

Mr. BURR. Enron hired outside counsel through you or you personally hired outside legal counsel?

Mr. MINTZ. I hired outside legal counsel on behalf of the company as its client.

Mr. BURR. On behalf of the company as its client. And your primary reason for that was what?

Mr. MINTZ. As I mentioned before, this Enron/Wind deal concerned me because of the magnitude, and it was different than apparently the transactions that were engaged in before LJM. Also the issues regarding some of our disclosures continued to gnaw at me, and I wanted somebody to take a fresh look at that.

Mr. BURR. Who above you in Enron management did you share with the fact that you had hired outside counsel to look into this?

Mr. MINTZ. At that time, nobody, Mr. Congressman.

Mr. BURR. You would have answered to Mr. Derrick at that time?

Mr. MINTZ. On the legal side, that is correct.

Mr. BURR. And did any conversations that took place between you and Mr. Derrick prior to your decision to hire outside counsel lead you to believe you needed to hire outside counsel?

Mr. MINTZ. Mr. Derrick is a gentleman of the highest ethics and integrity, but I had brought—I was down on the 20th floor; Jim was on the 50th floor.

Mr. BURR. Am I safe to assume from that answer that the points that you might have raised with Mr. Derrick were on deaf ears?

Mr. MINTZ. I don't think he appreciated the dysfunctionality that I observed on a regular basis.

Mr. BURR. You are still extremely too kind. Mr. McMahon, you were involved in the Chewco buyout, weren't you?

Mr. MCMAHON. Not directly, because it——

Mr. BURR. You had knowledge of it.

Mr. MCMAHON. I had knowledge of the proposal to actually buy out Chewco in early 2000. My understanding is it actually got bought out in 2001.

Mr. BURR. You had originally signed off on a deal that would have profited someone a million dollars to Chewco, correct?

Mr. MCMAHON. My group actually proposed the transaction to Mr. Fastow in order to essentially unwind the JEDI partnership where Chewco was the other investor. We proposed the transaction to simplify the capital structure of the company. And, yes, the proposal to Mr. Fastow was that we would recommend to spend $1 million to buy out the Chewco equity in JEDI.

Mr. BURR. And, in fact, when that deal came back it was over $10 million.

Mr. MCMAHON. That is how I understand it from the Special Committee report. It happened approximately a year after I moved out of the treasurer role.

Mr. BURR. Can you shed any light on who it would take within Enron during that period to approve such a large difference between the proposal that you apparently had some financial basis to come up with and in fact a number that was 10 times larger?

Mr. MCMAHON. Well, I wasn't party to the actual negotiations that Mr. Fastow had with the Chewco investors, but as far as the approval goes, I actually am not certain within the company who would have that authority.

Mr. BURR. Would it take Mr. Skilling?

Mr. MCMAHON. I don't know.

Mr. BURR. At what level does a decision to execute a buyout like this require?

Mr. MCMAHON. That would go through our capital expenditure policy, and this is a $10 million payment, so I am just unfamiliar with what level of management.

Mr. BURR. Could this transaction have taken place and Mr. Skilling not have known?

Mr. MCMAHON. I don't know.

Mr. BURR. Was Mr. Fastow involved?

Mr. MCMAHON. Well, the discussions I had in 2000 about our recommendation to buyout Chewco, Mr. Fastow was very involved. He listened to our recommendation, understood the proposal of a million dollar buyout. Then he said he would personally handle the negotiations with Mr. Kopper.

Mr. GREENWOOD. The time of the gentleman has expired.

Mr. BURR. Note that that is significantly different than what he suggests his involvement was, which was none. I thank the Chair.

Mr. GREENWOOD. The Chair recognizes the gentleman from Illinois, Mr. Rush, for purposes of inquiry.

Mr. RUSH. Thank you, Mr. Chairman. Mr. McMahon, I want to determine, are you currently—you are still currently affiliated with Enron, is that right?

Mr. MCMAHON. Yes. As of last week, I am the president and chief operating officer of the company.

Mr. RUSH. President and chief operating of the company. Well, then, let me ask you this question: This week it was mentioned—noted that Mr. Buy and Mr. Causey would leave Enron. Is that the case?

Mr. MCMAHON. I believe right now Mr. Buy and Mr. Causey are both current employees of Enron. The board convenes next week to deliberate on any type of actions they plan to take with respect to the results of the Special Committee report.

Mr. RUSH. Okay. And so are they in fact, as was indicated earlier, are they negotiating some kind of severance package?

Mr. MCMAHON. Currently, I believe, where it stands, Congressman, is no action has been taken either way. Neither employee to date has resigned. As of to date, the company has not terminated, to the best of my knowledge, and the decision has really been undertaken by the board on what action to take, which will—as I understand it, they will meet next week to talk about that.

Mr. RUSH. Well, can you describe for the committee any severance packages that they might be eligible for?

Mr. MCMAHON. I think, basically, due to the bankruptcy, I don't believe that, as of right now, they are eligible for any severance package that was any different than any of the other severed employees. But, again, that is a matter for the board, not for myself.

Mr. RUSH. Okay. So are you saying that Enron does have an existing policy that would determine severance packages in the event of bankruptcy?

Mr. MCMAHON. That is technically a little bit different. We had an existing policy that, as I understand it, was terminated as a result of the bankruptcy, and therefore we are limited to severance payments that are sanctioned by the bankruptcy court.

Mr. RUSH. Well, then does Enron have a policy that officers who have breached their fiduciary responsibility to the company or are being terminated for cause, that they must forfeit their severance pay, severance package?

Mr. MCMAHON. I am not aware of a policy one way or another with respect to that.

Mr. RUSH. So would you—do you have any role in terms of making recommendations to the committee?

Mr. MCMAHON. No. These are two senior officers of the company that were elected by the board of directors, and the board of directors will take the appropriate action they deem necessary.

Mr. RUSH. Mr. Olson, yesterday we heard some lengthy testimony from Mr. Chanos about short sellers, that for some time they had concern regarding Enron's overstated stock value. These analysts noted Enron's confusing disclosures and related party transactions. They also noted the constant selling of stock by insiders. Give us a panoramic view of the industry. Is this common in the industry?

Mr. OLSON. I would be glad to. In my opinion, Enron way back when, when Mr. Chanos presumably was referring to it, when the stock was $80 or $90, it was gloriously overvalued, in my opinion. You had an era of really good feelings. The stock was up 88 percent in the year 2000, and everybody seemed to be out there recommending it. But no one had really been out there connecting all the dots. There was always a reason that some of the selling was going on, that one person was going to retire and move to Colorado, one person was going to go off and do something else. But I think over 18 months, it turned out that about 68 members of top management left by September 30, 2001. We didn't have all the different

pieces to put together. We did not have the off-balance sheet financings. Those really became apparent when the Wall Street Journal got a hold of these partnership documents on LJM, I think, on October 17 or so, or somewhere around that time and revealed just some of the shenanigans going on.

There was a great fan club of Enron on Wall Street because of its tremendous stock market success. Everybody sensed, in my opinion, that they didn't understand it. I know I didn't understand the company very well. I had been covering it for its 15-year horizon, but you couldn't really get past the cosmetics. This company had gone from $13 billion of assets in 1994 to $65 billion 5.5 years later. It had taken its revenue base from $95 billion in the year 2000. It was headed toward $200 billion in 2001. By most measures, it was a great success, but on the other hand, Mr. Chanos and the short sellers were quite right, the stock was way overvalued, and it was coming down. With all due credit to him, I would tell you I think he was as lucky as he was smart.

Mr. GREENWOOD. The time of the gentleman from Illinois has expired. The Chair recognizes the gentleman from New Hampshire, Mr. Bass, for 5 minutes.

Mr. BASS. Thank you, Mr. Chairman. Mr. Burr asked you—Mr. Mintz, Mr. Burr asked you a minute ago about meeting with Jim Derrick who was Enron's general counsel, and you responded, as I recall, that you met with him several times about your concerns over LJM, correct?

Mr. MINTZ. I started a process in meeting with Jim after I had completed my due diligence to keep him abreast of what was going on related to LJM. I didn't feel that he had an appreciation up on the 50th floor.

Mr. BASS. Was there a situation where Fastow and Kopper came to you to complain about Enron's attorneys negotiating on behalf of Enron about LJM? Was there a discourse there that you are aware of?

Mr. MINTZ. There was a situation just when I began the job in October that almost immediately one of the senior attorneys brought to my attention that the buzz on the floor was that one of our attorneys was being fired. When I started the job, Mr. Kopper and Mr. Glisan came to me and told me that they wanted me to fire a particular attorney. I said, "You just hired me. Let me do my job. Let me make my own assessment."

Mr. BASS. Why was that? Why was that?

Mr. MINTZ. That they felt that he was unresponsive on a transaction.

Mr. BASS. Involving LJM?

Mr. MINTZ. That is correct.

Mr. BASS. Is it your understanding that Mr. Fastow left this lawyer of a voice mail message or any kind of communication, and what was the nature of that?

Mr. MINTZ. Well, I wanted to understand the facts that triggered all of this. I met with my colleague, and he told me his view of what happened, and he had told me during the process of the negotiations that he did receive a voice mail from Andy, from Mr. Fastow.

Mr. BASS. Did he describe the nature of that voice mail message?

Mr. MINTZ. What I read in the papers, I think, was accurate; it was expletive-laced.

Mr. BASS. I see. One quick question for you, Mr. Olson, then I would like to yield the balance of my time to the chairman of the committee. Just in general, and it may be—the answer may be obvious, but in your opinion, would any investor, anybody, even a brokerage firm that was not inside the corporation, be able to determine that there was any problem with Enron's accounting practices and the partnerships and generally the whole discussion that we have been having today?

Mr. OLSON. I am afraid to say that that is correct. From the outside looking in, you could not go beyond the accounting cosmetics that you would like to, but how do you—when they had $7.5 billion global assets out there, assets in India, Turkey, Sicily, you had no idea, they had over 2,500 subsidiaries, and, again, it was almost impenetrable, and I think that Enron was able to game us in that sense. We were increasingly reliant upon their judgment as to where their earnings trends were going.

Mr. BASS. Thank you.

Mr. GREENWOOD. The Chair thanks the gentleman for yielding. Mr. McMahon, would you turn in your document folder to Tab 10? And while you are doing that, let me indicate that the entire binder of documents that has been distributed to the members, without objection, will be made a part of the record.

Tab 10, Mr. McMahon, is the March 2000/April 2000 your calendar. Do you have that document?

Mr. MCMAHON. Yes, I do.

Mr. GREENWOOD. Okay. Let me ask you this question: Did you ever discuss your concerns regarding the LJM situation with other officers at Enron?

Mr. MCMAHON. Yes. I had frequent conversations, well, you say other officers, beginning with Mr. Fastow.

Mr. GREENWOOD. In looking at your calendar, perhaps you could help us develop a chronology——

Mr. MCMAHON. Oh, sure.

Mr. GREENWOOD. [continuing] and we will come back to this.

Mr. MCMAHON. On March 6, there was a social event where I met with Mr. Baxter that evening, who is one of the——

Mr. GREENWOOD. And Mr. Baxter is, identify him, please.

Mr. MCMAHON. Cliff Baxter was, at the time, one of the vice chairmen of the company. We had a conversation about the variety of conflicts that the LJM matters were——

Mr. GREENWOOD. And how did Mr. Baxter react to your concerns?

Mr. MCMAHON. He was aware of the conflicts as well as I was. He encouraged me to go see Mr. Skilling directly.

Mr. GREENWOOD. You said he was aware. Did he indicate to you that "This is bad, this is wrong, we need to do something about this," or did he just say, "Hey, if that is bothering you, go see Skilling."

Mr. MCMAHON. Well, there was a little bit of acknowledgment. I think it was widely known that the conflict existed. I mean, again, it——

Mr. GREENWOOD. This was a big dead elephant in the center of the room, right?

Mr. MCMAHON. I think it was widely known among frankly all—several layers of management about the conflicts. I explained to him personally how they manifested within my group. His suggestion to me was nothing probably will get resolved unless——

Mr. GREENWOOD. I am going to run out of time. You took your concerns to Skilling.

Mr. MCMAHON. Correct, and I——

Mr. GREENWOOD. Can you show us on the calendar when you did that?

Mr. MCMAHON. Yes. On the calendar, there is a meeting with Mr. Skilling on March 16. But, actually, the day before that, on March 15, you see a meeting with Mr. Fastow where I——

Mr. GREENWOOD. Let us go 1 day before that, to the 14th, with Mr. Greg Waley?

Mr. MCMAHON. Right, Mr. Waley.

Mr. GREENWOOD. What was that about?

Mr. MCMAHON. At that point in time, Mr. Waley had approached me about moving internally. He was also one of the senior members of management I had spoken to about my concern, and he knew I was unhappy in my current role. So he suggested that I move into the group he was now heading up.

Mr. GREENWOOD. Did you turn him down?

Mr. MCMAHON. I ultimately did turn him down. It was probably several days from that meeting, but it was not an internal move at the time I was willing to make.

Mr. GREENWOOD. And then—I will yield after this—but on the 16th, you met with Skilling in his office, according to your calendar, at 11:30. Could you describe that meeting for us?

Mr. MCMAHON. Yes. That meeting was about a 30-minute meeting where I sat down with Mr. Skilling and——

Mr. GREENWOOD. Did you make notes at that meeting?

Mr. MCMAHON. I did make notes at the meeting, actually prior to going into the meeting.

Mr. GREENWOOD. Do those notes at Tab 9 reflect the notes from that meeting?

Mr. MCMAHON. Yes. These are the two pages of an outline, a talking outline that I took into the meeting with me.

Mr. GREENWOOD. Tell us what this committee can learn from your notes.

Mr. MCMAHON. Essentially, the notes on the meeting, which was really, again, my talking points, were that the LJM situation had gotten to basically a point that was just untenable for myself and my group. We found ourselves negotiating against people who represented LJM. They were Enron employees. Andy Fastow was the ultimate senior person that all those people reported to. He set compensation and promotion——

Mr. GREENWOOD. I am out of time, and in respect for my colleagues——

Ms. DEGETTE. Mr. Chairman? I would ask unanimous consent that you grant 2 additional minutes to the gentleman and yield to me to follow-up on your questions about these notes. I think this

is an important line of questioning, and I have got the notes in my hand.

Mr. BASS. I have no objection to that, Mr. Chairman. My time is expired, though.

Mr. GREENWOOD. Well, I would yield the gentleman 2 additional minutes with unanimous consent, and I would be happy to have you yield them to me, and I will finish the line of inquiry.

Mr. BASS. That is fine. I will yield to the distinguished chairman.

Mr. GREENWOOD. And I will be generous with the time of the gentlelady from Colorado as well.

Now, your notes, sir, do they reflect in fact what you discussed with Mr. Skilling or did they reflect what you intended to discuss with Mr. Skilling? Did you in fact discuss the points that are reflected in your notes?

Mr. MCMAHON. Yes. I would characterize that my notes reflect both. This was what I intended to discuss when I——

Mr. GREENWOOD. You made these notes before you entered the meeting or during the meeting?

Mr. MCMAHON. Before I walked in the meeting, these notes were made as a talking outline for me.

Mr. GREENWOOD. And what was Mr. Skilling's reaction to your discussion with him?

Mr. MCMAHON. Mr. Skilling listened to my concerns. I went through a variety of conflict matters and asked him to do one of two things: Either remedy the situation——

Mr. GREENWOOD. What were the conflicts that you raised, how did you phrase it?

Mr. MCMAHON. I said there were several conflicts that I thought he needed to be aware of that were going on because of this. The Enron employees were negotiating against LJM representatives, and yet they all reported to Mr. Fastow. I saw that as a major conflict. Mr. Kopper——

Mr. GREENWOOD. How did he react to that?

Mr. MCMAHON. Throughout the meeting he pretty much listened, not a lot of——

Mr. GREENWOOD. You read body language pretty well, do you, facial language? Did he look like, "Oh, horrors, I didn't know this" or did he look like, "Yes, yes, I know."

Mr. MCMAHON. He didn't have much of a reaction, frankly.

Mr. GREENWOOD. He was kind of stone-faced about this. You couldn't read him.

Mr. MCMAHON. I could not read him, that is a fair assessment.

Mr. GREENWOOD. You walked out of the room and you thought to yourself, "Hmm." What did you think? Did you think—what did you think? You couldn't read him, but what did you think?

Mr. MCMAHON. Well, his parting words to me were that he understood all my concerns and that he would remedy the situation.

Mr. GREENWOOD. My time has expired. The Chair recognizes the gentleman from Louisiana, Mr. John.

Mr. JOHN. Thank you, Mr. Chairman. I am going to get back to that point here real quick. A lot of my questions have been answered, except something sticks in my mind that is very fascinating with Mr. Mintz' situation. It is fascinating to me that you, as the general counsel of Enron, would go outside your department,

and I assume you paid a nice little fee to Vinson & Elkins to be your in-house attorneys, and to go outside it is fascinating to me. Why would you do that? I think you shed a little bit of light, but I don't think you went far enough to satisfy at least some of my curiosities. Did Vinson & Elkins have anything to do with the structuring of these partnerships?

Mr. MINTZ. Congressman John, I think they were involved in many of the transactions as——

Mr. JOHN. Actually setting them up or providing legal advice on how to structure them?

Mr. MINTZ. I think it really related to legal advice regarding whether true sales opinions needed to be obtained, not so much the structure but rather what were the requirements from a legal perspective in order to reach the accounting objective?

Mr. JOHN. And that is what concerned you about the conflicts of interest.

Mr. MINTZ. Well, not so much the substantive aspects of the transaction. I was just concerned with something larger about the whole LJM relationship, and I wanted somebody to help me think through it.

Mr. JOHN. So in June 2001, you hired Fried Frank, correct?

Mr. MINTZ. Congressman, I think it might have been the month before, but that is correct.

Mr. JOHN. Okay. Yes, you had answered that earlier. And during the line of questioning with one my colleagues, we were getting to the fact of what came out of their investigation. How long—two-sided question: Give us a little synopsis of what their findings were, (a), and then, (b), it seems like in your conversation and in my notes that the relationship stopped all of a sudden with you and Fried Frank. Give us a little input about what their findings were and why they stopped?

Mr. MINTZ. If I may take even a step further back. When I approached——

Mr. JOHN. Can you push the microphone a little bit closer?

Mr. MINTZ. When I approached Fried Frank, it was really to focus on two different issues: One, this larger issue of the relationship, the related party relationship with LJM and what were their views about it; and then, second, I had lingering concerns about the disclosures that we had made in the proxy, and I asked them to review our disclosures. Almost immediately we had phone conversations thinking about the process. They were telling me the type of research that they were going to do, and we had an ongoing dialog. I provided them with some additional documentation along the way.

About a week or 10 days into their research and their review, Mr. Fastow, Andy, brought to my attention that he was working with his law firm, Kirkland & Ellis, to try to restructure his interest to reduce it below the threshold that it would no longer constitute a related party transaction. I think Arthur Andersen at that time told him that if he had any interest at all in the partnership, he would still be considered to be a related party, and they would have to disclose it. He came back and told me that he was going to sell his entire interest in the partnership.

And I was sort of elated by that news, because it was going to go away and presumably a lot of the dysfunctionality was going to go away. So when I brought that to Fried Frank's attention, I asked them could they change their focus somewhat and help me think through about what is the best way to terminate the interest and to clean things up, if you will.

Mr. JOHN. When and with whom did you share any of this information about bringing in an outside firm? Did any of the top management know or did you, at any point in time after this, share with them what you were doing?

Mr. MINTZ. I did. The most important thing that I gleaned from the advice from Fried Frank was, "Although the disclosures probably pass muster, here is an opportunity to sort of clean things up. So in the quarter that Mr. Fastow sells his interest, why don't you expand your disclosures in the 10-Q, and then when you go ahead and file your proxy in the following year, why don't you make a more expansive disclosure at that time?"

And I had—I think it was sometime in August when we were starting to think about the—well, the problem was Mr. Fastow—it lingered until he sold his interests. So instead of it being the second quarter, it turned out to be the third quarter, as we started getting ready to think about preparation of the Q. I had discussions with one of our senior securities attorneys about making a fuller disclosure.

Mr. JOHN. Okay. My time is running out. I got one more——

Mr. GREENWOOD. The Chair would ask unanimous consent for the gentleman to have an additional 2 minutes of time and would note that if he would like to yield that to his colleague, Ms. DeGette, that would be consistent with my——

Mr. JOHN. I will be glad to. I have got two more very, very quick questions. First of all, Mr. Mintz, another fascinating aspect of this is the signing of this document. Is there any doubt in your mind that Mr. Skilling was never aware of these transactions? Is that why maybe he didn't want to sign them?

Mr. MINTZ. No, I don't think that is the case.

Mr. JOHN. You think he knew all about them.

Mr. MINTZ. Certainly the majority of them, I do.

Mr. JOHN. Okay. And, finally, we were getting down to Mr. McMahon's—to maybe the crescendo of this meeting he had with Mr. Skilling about what all happened. And as you walked out, he said that he is going to try to fix this. But isn't it true that you also shared a lot of the concerns with Mr. Causey, Mr. Buy, Mr. Lay and Mr. Sutton, and not one of them helped you or gave you advice, other than maybe just, "Get out of the way." In fact, you even told some of the committees that you told Mr. Sutton that Mr. Fastow could make as much as $15 million. Is that true?

Mr. MCMAHON. Yes. When I met with Mr. Sutton, which actually was after Mr. Skilling's meeting, apparently, according to Mr. Sutton, Mr. Skilling delegated the responsibility to Mr. Sutton, who was also vice chairman of the company, to deal with my issue that I had raised in the previous meeting. And it was at that point in time Mr. Sutton was asking me about what type of compensation one could get from this type of fund, and I explained to him, based

on the math as I knew it, which was standard, private equity could be somewhere at $10 million to $20 million per year.

Mr. JOHN. And final, maybe a comment, maybe not. When things got so bad you finally gave Mr. Skilling an ultimatum, you either had to fix this or get a new job, and it was very fortunate for you that there was another job waiting for you. And as you left Mr. Skilling's office, not much time has passed before Mr. Fastow had called you and said, maybe I can paraphrase it, ''We have got a new job for you. The pay is the same, but you have a new job.'' Can you comment on that?

Mr. MCMAHON. Actually, the process was a little bit different. I actually had a long discussion with my wife before I even walked into Mr. Skilling's office, because I knew the potential ramifications. Mr. Fastow, actually, did not suggest I take a new job; in fact, quite the opposite. About a week or two later, he called me in and suggested that he was unclear whether he and I could continue to work together.

Mr. JOHN. Mr. Fastow.

Mr. MCMAHON. Mr. Fastow, who was my boss. It was hours after that meeting when Mr. Skilling advised me that he thought there was a much better job in the company for me and that I should seriously consider taking it.

Mr. JOHN. And I will yield the balance of my time to the lady——

Mr. GREENWOOD. The gentleman has consumed all 3 of the 2 minutes that was yielded to him.

The Chair asks unanimous consent that the Chair be granted an additional 2 minutes and then yields that to the gentlelady from Colorado.

Ms. DEGETTE. Thank you for you comity, Mr. Chairman. Let me follow-up, Mr. McMahon, on Mr. John's question. Why did you think you were being transferred within the company?

Mr. MCMAHON. Maybe naively at the time I certainly believed Mr. Skilling when he told me that he thought I would be better able to use my skillsets elsewhere in the organization at a new startup group related to e-commerce.

Ms. DEGETTE. Now, in March and April of 2000, what was your title with the company?

Mr. MCMAHON. In March of 2000, I was treasurer of Enron Corp.

Ms. DEGETTE. You were treasurer of Enron Corp. And, as such, you owed a fiduciary duty to Enron Corp. at that point, correct?

Mr. MCMAHON. I believe that is correct.

Ms. DEGETTE. And, as we have been discussing here, you had this meeting with Mr. Skilling. These are your notes, exhibit 9. I think it bears hearing some of the things you said: ''Untenable situation, LJM situation where AF wears two hats, I find myself negotiating with Andy''—I assume that was Fastow.

Mr. MCMAHON. That is correct.

Ms. DEGETTE. ''On Enron matters and am pressured to do''—I can't read the—do you have those in front of you?

Mr. MCMAHON. I do.

Ms. DEGETTE. ''And am pressured to do—''

Mr. MCMAHON. ''A deal.''

Ms. DEGETTE. "A deal that I do not believe is in the best interest of the shareholders." That is what you wrote in your notes, in March of 2000, right?

Mr. MCMAHON. That is correct.

Ms. DEGETTE. And did you talk about that with Mr. Skilling in the meeting?

Mr. MCMAHON. I did talk about that with Mr. Skilling.

Ms. DEGETTE. And what was his response?

Mr. MCMAHON. Again, he was—as I said earlier, he was hard to read. He actually didn't have a response.

Ms. DEGETTE. So he didn't say anything when you said, "I do not believe it is in the interest of the shareholders," right?

Mr. MCMAHON. That is correct.

Ms. DEGETTE. And then you have here, "Request options. My integrity forces me to continue to negotiate the way I believe is correct," right?

Mr. MCMAHON. Correct.

Ms. DEGETTE. And then you said, "In order to continue to do this, I must know I have support from you." Did you say all that to Mr. Skilling?

Mr. MCMAHON. I did say that to Mr. Skilling.

Ms. DEGETTE. Now, after that meeting, in March 2000, nothing really changed, did it?

Mr. MCMAHON. With the structure? My job changed.

Ms. DEGETTE. Yes, okay. They moved you to another job. But as far as you know, the LJM situation that you were so concerned about never changed, did it?

Mr. MCMAHON. As far as I know. I really don't know what happened. My new job took me away——

Ms. DEGETTE. Well, were you worried about the LJM situation after that? I mean you were a fiduciary of the corporation at that point.

Mr. MCMAHON. That is correct, and I spoke to Mr. Skilling who was a board member, as well as Mr. Sutton, after that, who was a vice chairman, who both indicated to me that they would resolve these problems.

Ms. DEGETTE. But they never—so you never took any further duty to see if the problems were resolved, did you?

Mr. MCMAHON. Well, after that I had different responsibilities with the company.

Ms. DEGETTE. Okay. But the answer is no, you didn't take any additional duty. You just said, "Well, I am transferred, so it is not my problem any more," right? Pretty much?

Mr. MCMAHON. I don't think that is a fair characterization, frankly.

Ms. DEGETTE. Did you ever talk to any board members about this?

Mr. GREENWOOD. The time of the gentlelady has expired.

Mr. MCMAHON. Yes. Mr. Skilling is a board member.

Ms. DEGETTE. Oh, okay. Thank you.

Mr. GREENWOOD. The gentleman from Oklahoma has waited three and a half hours patiently for a question, and the Chair yields him 5 minutes.

Mr. LARGENT. Thank you, Mr. Chairman. Mr. Bauer, I wanted to address my first question to you. In your opening statement, you talked about special purpose entities and some of the accounting parameters that have to apply to those. And some of those parameters dealt with the relationship between the parent company and the SPE.

Mr. BAUER. Yes, sir.

Mr. LARGENT. What are those parameters that have to be in place to qualify as an SPE?

Mr. BAUER. Yes, sir. I identified in my comments two specific matters: One, that the 3 percent equity needed to be independent of Enron or independent of the sponsor of the SPE, and then also that the sponsor could not control the SPE.

Mr. LARGENT. Okay. Given that definition, Mr. Mintz, I wanted to go—this issues checklist that is under Tab 26, that has been referred to, that you gathered several signatures minus Mr. Skilling, is that an issues checklist that you compiled or was that an Enron document that was just a standard blank document?

Mr. MINTZ. Congressman Largent, when I started my job in October 2000 in Global Finance, that LJM approval sheet and the issues checklist was already in place.

Mr. LARGENT. Okay. That leads me to this question: Question 4(c) that is on the second page of this document says, ''Have all Enron employees involvement in this transaction on behalf of LJM been waived by Enron's Office of the Chairman, in accordance with Enron's conduct of business affairs policy, yes or no?'' It seems to me that the very question is stating that it is violating one of the parameters that has to be in place to qualify as a special purpose entity, is it not? I mean that Enron just routinely waived this arms-length understanding to qualify for an SPE. But it is on a standard form, this isn't a handwritten note. This is a standardized form saying that ''We waive that parameter, that restriction.''

Mr. MINTZ. Congressman Largent, I was very troubled with the checklist when I came into the job and shared that with Mr. Buy and Mr. Causey in a memo that I wrote to them a couple months into the job.

Mr. LARGENT. Mr. McMahon, I want to ask you, and a couple of other members, and this is my last question, a question. And this is an opinion, this is a subjective question; I understand that. But as I mentioned in my opening statement, the issue before this committee, we are not—we should not be, although I think that it is carrying a tone of being prosecutorial, that is the Justice Department's responsibility, not Congress'. We are trying to figure out are there some things that we need to do to ensure that this doesn't happen again. My question, Mr. McMahon, is this: In your opinion, are other businesses practicing in this way that Enron has been the subject of this hearing? Are other businesses participating in this same sort of practice, the accounting gymnastics and all of the things that were going on with SPEs in an effort to fool Wall Street and analysts? Is that commonplace?

Mr. MCMAHON. Congressman, I am really unable to respond how other businesses operate.

Mr. LARGENT. I am asking for your opinion. I mean you talk to people that work at Dynegy or other companies, whether it is—

whoever it is. Are other businesses conducting themselves, in your opinion—this is an opinion, this is subjective—are they doing the same thing that you all were doing?

Mr. MCMAHON. I am afraid I really can't give you an opinion on that, because I don't know enough——

Mr. LARGENT. How about Mr. Mintz, do you have an opinion? Do you think this is commonplace or is this an anomaly?

Mr. MINTZ. He is the president of the company, I think I am going to have to defer to him.

Mr. LARGENT. Okay. Mr. Olson, how about you? Your business is to look at these companies inside and out. Is this a common practice or is Enron an anomaly?

Mr. OLSON. Congressman, the conventional asset structures that Enron used are very commonplace. General Electric, banks, credit card companies and so forth use these kind of structures very conventionally. What Enron did was to mutate that structure into something virtually unrecognizable and used this SPE capital structure of 97 debt, 3 percent equity. Corporate America for the last 10 years has been about a 50/50 debt/equity capital structure, and, in essence, Enron put a lot of basically LBOs with the stockholders at risk, put a lot of paper on their off-balance sheet financings, I want to say this way.

We are about to find out, I am sure, about some of the other companies out there. I don't know if any others among Enron's competitors who went anywhere to this degree. I have to say that when you deal with derivatives they are like hand grenades or land mines or something. JP Morgan Chase, for instance, just found out about that the hard way. That is my opinion.

Mr. LARGENT. Okay. Mr. Olson, let me just list one final question. I guess the issue that is before us, and I think most people—the question is, is this a case—and this is important for this Congress to understand too—is this a case that we just got a bunch of bad actors that were bending the laws, if not breaking the laws? Is this a case where we need additional laws to tighten this up, to make sure that this thing does not happen without breaking the law? Or is it a combination of both?

Mr. OLSON. In my very unvarnished opinion, you definitely need to institute regulations at the SEC level or at the accounting level. Some of the SPE accounting and the capital structure, for instance, is highly, highly borderline from an equity and investor point of view. The accounting, as I mentioned in my speech or testimony earlier, is as flaky as one could ever see. Enron, as the saying goes, they rode the edge, they crossed the line, they have paid the price, and it is a terrible price.

Mr. LARGENT. Thank you, Mr. Olson. Thank you, Mr. Chairman.

Mr. GREENWOOD. The Chair thanks the gentleman. The Chair recognizes the gentleman from Ohio, Mr. Strickland, for 5 minutes.

Mr. STRICKLAND. Thank you, Mr. Chairman. One of the things that I find fascinating about this particular committee is that people who appear before us take an oath. And I find it incredulous that there could be a meeting like the one that occurred between Mr. McMahon and Mr. Skilling with such important issues being discussed and that there would be no dialog. We have been told that he said nothing, and that seems like a rather strange meeting.

Now, I think to say, "I don't remember what he may have said," may be believable to me, but it is difficult for me to believe that you had this exchange with him, you shared these very important matters with him and that there was no response. Is that what this committee should believe or did he say something in response?

Mr. MCMAHON. As I mentioned earlier, he let me walk through my talking notes, and at the end of the meeting Mr. Skilling indicated to me that he understood my concerns and he would try and remedy the situation.

Mr. STRICKLAND. So he did say something in response.

Mr. MCMAHON. Yes. At the end of the meeting. I think I said that earlier.

Mr. STRICKLAND. And what he said, as you related to us, at this point, is that he understood or comprehended what your concerns were.

Mr. MCMAHON. That is correct.

Mr. STRICKLAND. And that he would——

Mr. MCMAHON. And that he would remedy the situation.

Mr. STRICKLAND. So he told you he understood the situation, the understood your concerns, and that he would remedy the situation.

Mr. MCMAHON. That is correct.

Mr. STRICKLAND. And in all due respect, I think that is a different kind of response than perhaps we were led to believe that he gave before. What does a remedy mean, sir, in your judgment?

Mr. MCMAHON. I took that to mean that he would—well, let me step back. Part of the solution here, I felt, a fairly easily mitigant to these conflict matters internally, was just some pretty simple restructuring. Take Mr. Fastow out of the performance review process, move some of these LJM representatives off the floor so they didn't have the proprietary information, et cetera, et cetera. So I thought they were fairly simple structural changes that could be made to mitigate this. And I took the "remedy the situation" meaning that he would investigate these and try and make those changes.

Mr. STRICKLAND. So you left the meeting with a personal conviction that you had been heard, that your concerns were understood and that there was a commitment to do something about them.

Mr. MCMAHON. And I was even, further than that, encouraged by the next day when the vice chairman of the company called me and said that he had been relayed the meeting information and that he was now responsible for solving the problem.

Mr. STRICKLAND. Thank you. Mr. Olson, I think the question—maybe the most basic question facing the country and perhaps this committee is who knew what, and when did they know it? And many of the senior officers have told the staff interviews that they didn't know the train wreck was coming until October. And I am asking for your belief here now, understanding that you may not be able to back it up factually. But is it your belief that senior officers in this company knew that trouble was coming prior to October?

Mr. OLSON. In a word, yes.

Mr. STRICKLAND. If so, do you have any estimate as when they may have known that this was going to happen?

Mr. OLSON. In a word, no, but if I may qualify that. The turnover, the departure of stock sales and the like all were pointing to something bad happening. This is why this stock lost so much of its credibility, going from $90 a share down to the 40's when Mr. Skilling resigned when the stock was around $42.

Mr. STRICKLAND. What are some of the signs that these upper management folks may have been aware of?

Mr. OLSON. I think that they were continuing to provide very bullish forecasts of the future. Mr. Lay was out there saying that the future was never better. Mr. Skilling made similar kinds of comments, even at his departure.

Mr. STRICKLAND. But isn't it true that these individuals were dumping their stock? Is there any reasonable explanation for why someone would sell of so much stock at the same time they were painting a rosy picture and encouraging others to buy it? Can you think of any reasonable explanation for that?

Mr. OLSON. No, in effect. I mean we were massaged, if you will, by saying, well, these people here are going through a lifestyle change or someone is going to retire or leave and the like. But, again, it was a matter of connecting all the dots. We really didn't know that so-and-so was cashing in $353 million. I mean we didn't—we were just too busy to ever add these kind of numbers up. And low and behold, when someone did that kind of dirty work, it was stunning. But no one really had connected the dots.

Mr. STRICKLAND. Which officers do you think may have had information that was unavailable to the board members and the stockholders?

Mr. OLSON. I would say that the rogue financing, rogue accounting operation that was underway there, there may have been—I am not qualified to tell you just how many people there were—this company had 245 lawyers, and you would think that we would have these checks and balances in there. But I would imagine anybody in the Fastow organization or directly reporting to him or in the Special Projects kinds of things had to know that they were using borderline accounting and highly leveraged transactions.

Mr. GREENWOOD. The time of the gentleman has expired. The gentleman from California, Mr. Waxman, while not a member of the Oversight Committee, is a member of the full committee and is recognized for 5 minutes for inquiry.

Mr. WAXMAN. Thank you very much, Mr. Chairman. Over the past 2 months, investigators on my staff have interviewed numerous former Enron employees. These interviews have given us a glimpse of how the company was run. The picture that emerged is one in which executives profited handsomely while the employees suffered. I would like to ask maybe Mr. McMahon this question. We have been told that many—this is in response to some of the allegations we have picked up from former Enron employees—we have been told that many Enron executives cashed in their deferred compensation plans last November after Dynegy made a $1.5 billion cash infusion into Enron at the time, the two companies were discussing a merger.

The allegation is that the Enron executives cashed out because they would have lost all their deferred compensation money if the company went into bankruptcy. And according to information we

have been told, Enron executives were draining the company's coffers right before the company went under. And even though these executives received less in deferred compensation than they were entitled, they got a lot more than thousands of average employees who lost their jobs and were given minuscule severance payments. Suspicion has been raised by others about how Dynegy's money was spent. Dynegy's CEO, Chuck Watson, was quoted in the New York Times as saying Enron had burned through over $1.5 billion in less than 3 weeks. Neither the treasurer nor the CEO could explain where the cash went.

I would like to substantiate whether this was a significant activity in the deferred compensation plan. Do you know or did you personally—did you personally withdraw any or all of your deferred compensation funds?

Mr. MCMAHON. No, I did not withdraw any, nor do I have any. The matter you are talking about I am not 100 percent familiar with. During that time period, I was appointed CFO late October. That matter would have been handled by our Human Resource Department, so, unfortunately, I don't have the facts with me on the deferred comp plan, but I would be happy to get back to the committee.

Mr. WAXMAN. Do you know whether there were executives that were cashing out their deferred compensation plans before the bankruptcy?

Mr. MCMAHON. My understanding is during that timeframe there were deferred compensation payment requests. I am not familiar with who or how much was disbursed.

Mr. WAXMAN. Who at Enron would keep the records of deferred compensation withdrawals?

Mr. MCMAHON. That would be in our Human Resource Department.

Mr. WAXMAN. And I would like to request to the chairman that he be sure to subpoena copies of these records to see if there were these deferred compensations at the time we were told.

I understand that companies keep track of the stock options owned and exercised by its employees. While Enron is required by the SEC to report all stock transactions involving officer, directors and major shareholders, it is not required to report transactions of other senior executives. Who at Enron keeps records of stock options and when they are exercised?

Mr. MCMAHON. Again, that would be their Human Resources Department.

Mr. WAXMAN. Well, I think it is important for this committee to determine whether senior executives profited from insider knowledge about Enron's financial situation, and I would also like to request that the chairman issue a subpoena, if that is necessary, for all the records of employee stock sales or purchases, including any exercises of stock options of over 1,000 shares that occurred during 2001.

Mr. GREENWOOD. The Chair will take the gentleman's requests under consideration.

Mr. WAXMAN. Last fall, as Enron was unraveling, Enron reportedly made millions of dollars in payments to a number of Enron executives. In press accounts, Enron characterized these payments

as retention payments. We have heard, however, that payments amounting to hundreds of thousands of dollars were made to executives of non-core Enron businesses or to Enron businesses that are now essentially defunct. We also heard that some of those who have received such payments did not remain at Enron. Mr. McMahon, who at Enron would have records of the names, positions and current employment status of all the Enron employees who received significant retention payments between October through December of 2001?

Mr. MCMAHON. Again, that would be in our Human Resource Department.

Mr. WAXMAN. And, Mr. Chairman, I would like to make a request for you to consider subpoenaing those records as well.

Mr. Olson, you answered the question about SPEs of Mr. Largent. These are the special purpose entities. And you said it is not just Enron but other corporations that are using these in ways that may be for the same purpose but maybe not. But it was the way that Enron was able to move debt off its balance sheets and inflate the company's revenues. And you indicated you thought Congress ought to deal with this issue.

I do want to point out that in the late 1980's, the Securities and Exchange Commission raised concerns about SPEs and they asked the Financial Accounting Standards Board to establish rules for SPEs. And FASB, a private organization in charge of establishing standards for financial accounting and reporting, is funded and overseen by accounting firms and their clients. The result has been a weak set of rules that continue to mask from investors many off-balance sheet transactions. Congress should have done more, shouldn't it——

Mr. OLSON. Absolutely.

Mr. WAXMAN. [continuing] rather than just let FASB do this?

Mr. OLSON. Either at the SEC level or FASB level, so someone is asleep at the switch.

Mr. GREENWOOD. Time of the gentleman has——

Mr. OLSON. To put the equity owners of a company at such risk with recourse to the company and to threaten its credit ratings and the like, with this kind of capital structure and marginal assets, is unconscionable.

Mr. WAXMAN. I think there are a lot of areas where Congress was asleep at the switch and that this whole debacle is an indictment of our political system as well.

Mr. GREENWOOD. Chair thanks the gentleman. The Chair also recognizes the gentleman from Texas, Mr. Green, who while not a member of the Oversight Committee is a member of the full committee and has been very assiduously participating in these hearings and is recognized for 5 minutes.

Mr. GREEN. Thank you, Mr. Chairman. Again, thank you for your courtesy to those of us who are members of the full committee, and, again, I want to reiterate the interest that I have being a Member of Congress from Houston in this situation.

Mr. McMahon, did you just tell Mr. Waxman that you didn't have stock options with Enron?

Mr. MCMAHON. No. I believe Mr. Waxman was talking about Deferred Compensation Program and withdrawals.

Mr. GREEN. Okay. But you had stock options.

Mr. MCMAHON. Yes.

Mr. GREEN. And were those cashed in within the last year with Enron?

Mr. MCMAHON. I believe the last stock options—you are talking about myself, personally.

Mr. GREEN. You, sir, personally.

Mr. MCMAHON. Last stock options I exercised was in March of 2001.

Mr. GREEN. Okay. In the Powers report, and I would like you to outline some of the transactions relating to the decision to have JEDI buyout Chewco. On page 60 and 61 of the Powers report, it outlines how Mr. Fastow and Mr. Kopper negotiated with you on the rate of investment return to the Chewco investors. The report states that you wanted to offer the Chewco investors a million dollar rate of return, but after discussions were held between Mr. Fastow and Mr. Kopper, that rate was increased to $10 million. What kind of justification did Mr. Fastow have for increasing the rate of return by nearly 10-fold?

Mr. MCMAHON. Mr. Fastow indicated to me that in a liquidation analysis of the partnership, if you were to liquidate all the assets within the partnership at the time, which actually my group agreed with, that the value of that interest to Chewco would be in excess of $20 million. So he felt, or he indicated to me that based on that the negotiations—the million dollars was unacceptable to the Chewco partners, so he negotiated a settlement of $10 million.

Mr. GREEN. Where did you come up with a million dollars?

Mr. MCMAHON. The way that we had looked at it was my group did look at that liquidation of the partnership and saw that in fact there could be a scenario where that equity could be worth in excess of $20 million. However, the partnership had 10 or 15 years more to run on it. So our notion was as a commercial transaction that you should be able to approach the equity holder and say, "Do you really want to wait 10 or 15 years and take the risk of the value or do you want to take a million dollars now and have a nice return?" So we felt a million dollars was reasonable enough return on their equity, but it was substantially less than the value of share liquidation.

Mr. GREEN. Did Mr. Fastow directly benefit from that particular transaction?

Mr. MCMAHON. Not that I am aware of.

Mr. GREEN. It does seem like, though, the partnership in a fiduciary relationship, you started with a million and you—if the $10 million that went to the partnership, obviously if it had been a million, that money would have stayed in Enron.

Mr. MCMAHON. That is correct.

Mr. GREEN. Okay. So the fiduciary relationship that maybe Mr. Fastow had with Enron he was more interested in the partnership.

Mr. MCMAHON. It is hard to say, Congressman. I mean there was a commercial negotiation that underwent that I wasn't part of.

Mr. GREEN. But he was negotiating for the partnership and not for Enron.

Mr. MCMAHON. No, he actually was negotiating on behalf of Enron with Mr. Kopper, who was negotiating for the partnership.

Mr. GREEN. I have a question concerning Enron's 401(k) plan that was offered to your employees, and, again, I know most of your responses have been Human Resources, but let me ask if you have the knowledge about it. In the copy of Enron Corporation's savings plan, I would like you to define the term found in article 15. Article 15 deals with the company's fiduciary responsibility to manage that land. It states that, ''The committee shall have final say over decisions impacting the savings plan.'' And then I flip back to article 1 of the savings plan to examine the definitions. And when I found the defined term of the committee, it is the Administrative Committee appointed by Enron Corp. to administer the plan. This definition doesn't seem to shed light on who was responsible for administrating the 401(k) plan, which, as we know, devastated the employees. Can you tell me do you have knowledge of who was on that committee and who supposedly managed the Enron savings plan?

Mr. MCMAHON. Unfortunately, I do not have knowledge of who was on that committee. I was not on that committee, and as I testified earlier, my responsibilities are fairly new here. But I would be happy to get those facts and get them back to the chairman when we can get them.

Mr. GREENWOOD. The time of the gentleman has expired.

Mr. GREEN. Thank you, Mr. Chairman. We would love to have that information for the committee.

One last question, if I——

Mr. GREENWOOD. Time of the gentleman has expired. There will be a second round.

Mr. GREEN. Okay. Thank you, Mr. Chairman.

Mr. GREENWOOD. The Chair recognizes the gentleman from Massachusetts, Mr. Markey, who while also not a member of the subcommittee is a member of the full committee. We are happy to have his presence. You are recognized for 5 minutes.

Mr. MARKEY. Thank you, Mr. Chairman, for your courtesy. Mr. McMahon, you have been Enron's CFO since last October and Enron's president and chief operating officer since last week. So I am going to ask you a set of questions now which will determine whether or not what we are hearing here today is the iceberg or just the tip of the iceberg.

In addition to Raptor, Chewco and LJM entities, how many other special purpose entities has Enron created?

Mr. MCMAHON. I don't know the answer to that.

Mr. MARKEY. You don't know. Were any of these other SPEs set up with current or former Enron employees, officers, directors or their relatives, either as general partners, limited partners or as investors or beneficiaries?

Mr. MCMAHON. I am not aware of any of those.

Mr. MARKEY. You are not aware of any. Have you looked at that issue yet?

Mr. MCMAHON. In my current capacity as president, I have not.

Mr. MARKEY. How about in your capacity as chief financial officer since October, the navigator of the financial well-being of the company? Did you look at that issue from October through last week?

Mr. MCMAHON. No, I have not, because my focus, as the chief financial officer, late October was to try to keep the company's liquidity in place.

Mr. MARKEY. Understand that.

Mr. MCMAHON. We had a Special Committee of the Board was looking for investigative work, looking backwards.

Mr. MARKEY. So you didn't think that was your job as the chief financial officer.

Mr. MCMAHON. That is not quite what I said, Congressman. What I said was I was trying to keep the liquidity within the company, and I think that was a higher priority.

Mr. MARKEY. No, but necessarily you have had 5 months to look at it and these other questions, which relate to the liquidity of the company in fact. How much has Enron invested in other SPEs, do you know?

Mr. MCMAHON. I do not know.

Mr. MARKEY. Do you know if any of these other SPEs have been used to remove debt from Enron's books, conceal investment losses or inflate Enron's earnings?

Mr. MCMAHON. I believe several of the SPEs are related to debt transactions, but I don't know what they all have been or——

Mr. MARKEY. How many?

Mr. MCMAHON. I do not know.

Mr. MARKEY. How much debt?

Mr. MCMAHON. I don't know the answer to that.

Mr. MARKEY. You don't know the answer to that. Has Enron provided any guaranties to any of these other SPEs against investment losses?

Mr. MCMAHON. I am not aware of any, but I don't know.

Mr. MARKEY. You don't know the answer to that. Do any of these other SPEs have any contract agreement or understanding with Enron that if it loses money, Enron will issue it Enron stock or options, warrants or other rights to obtain such stock?

Mr. MCMAHON. There are two that I am aware of that have that feature.

Mr. MARKEY. They are?

Mr. MCMAHON. There is a transaction called Marlin, there is a transaction called Osprey, or Whitewing.

Mr. MARKEY. Okay. And what happened in those? What is the arrangement there?

Mr. MCMAHON. The arrangement there, as I understand it, is if there is a shortfall in the asset values within the vehicles, that the company is required to issue a sufficient amount of shares to satisfy the deficiency between the asset value and the debt obligations of the vehicle.

Mr. MARKEY. Now, Sherron Watkins' August 14 memo to Ken Lay warned about, quote, "NTM problems, mark-to-market problems in Enron Energy Services and Enron International Investments." What problems was she alluding to?

Mr. MCMAHON. I do not know.

Mr. MARKEY. You have been the chief financial officer since October. There is a memo there saying there is big financial problems there, and you haven't look at it yet?

Mr. MCMAHON. The Special Committee was charged with that responsibility.

Mr. MARKEY. Beginning in October?

Mr. MCMAHON. Yes.

Mr. MARKEY. So you have never looked at it. In fact, on page 1 of the Powers report, it says, "Many questions currently part of the public discussion, such as questions relating to Enron's international businesses and commercial electricity ventures, broadband, et cetera, transactions within Enron securities by insiders, are beyond the scope we were given by the board." So they did not have authority to look at it. Did you look at it? The board was not given authority. As the chief financial officer, did you look at it in your fiduciary responsibility?

Mr. MCMAHON. I have not looked at that at this point in time. Again, we are focused on liquidity, then of course the bankruptcy. These are matters that are related to ultimately looking back and determining what the audited—ultimately getting an audited set of financial statements.

Mr. MARKEY. I understand, but you are the chief financial officer.

Mr. MCMAHON. No, actually, I am the president of the company.

Mr. MARKEY. You were. Have you conducted any investigations or inquiries to determine whether there is false or misleading mark-to-market accounting treatment of any of Enron Energy Services?

Mr. MCMAHON. Not at this point.

Mr. MARKEY. You have not. Have you, as chief financial officer or as chief operations officer, conducted any investigations or inquiries into any of the other SPEs to determine whether any of them raise accounting or disclosure issues which might be material to investors?

Mr. MCMAHON. We are currently, as part of the bankruptcy process, trying to understand all these other SPEs, and so that work is ongoing as we speak.

Mr. MARKEY. You are conducting an investigation of each of those matters?

Mr. MCMAHON. We are looking through every special purpose entity that the company has at this point in time with respect to our bankruptcy and determining who our creditors are and how much they are owed.

Mr. GREENWOOD. Time of the gentleman from Massachusetts has expired.

Mr. MARKEY. Mr. Chairman, if I may just finish the sentence. If I may just finish the sentence. I would just say, Mr. McMahon, I think what your testimony is telling us is that all we know so far is the tip of the iceberg, that the iceberg is yet to be discovered, because thus far you, as the chief financial officer since all of us became public, did not look for the rest of the iceberg, and that is why the Congress and other investigators are going to have to do the work that, in my opinion, you and others inside of the firm should have done as soon as you were put on notice there were problems, especially with these SPEs, after the letters that—the documents that came from Ms. Watkins.

Mr. GREENWOOD. Time of the gentleman has expired. The Chair would inform the subcommittee members, full committee members

and the witness that we do intend to undertake a second round of questioning. It should not take as long as the first one. Do any of the witnesses need to take a 5-minute convenience break at this point? You are all good, strong men.

Then in that case, the Chair recognizes the chairman of the full committee, Mr. Tauzin, for 5 minutes.

Chairman TAUZIN. Thank the chairman. Let me turn, Mr. McMahon, to some questions that continue to puzzle the dickens out of me, and, first of all, I want to lay the groundwork for something you—you did know Sherron Watkins, did you not?

Mr. MCMAHON. That is correct.

Chairman TAUZIN. Did you know her before her work at Enron?

Mr. MCMAHON. Yes. I have known Sherron for several years.

Chairman TAUZIN. Did you know about her August 14 or 15 memo to Mr. Ken Lay describing what she considered to be problems that might amount to an implosion of the company and a wave of accounting scandals?

Mr. MCMAHON. She sent me a copy of that one-page letter after she had delivered it to Mr. Lay. And then she came and we spoke about it.

Chairman TAUZIN. Did you speak to Mr. Lay about Sherron Watkins and her letter?

Mr. MCMAHON. I did. When Sherron came by to see me, I encouraged her to actually take authorship of that letter and see Mr. Lay directly.

Chairman TAUZIN. That is to not do it anonymously but to let him know it was she who was writing it. Did you recommend her to Mr. Lay?

Mr. MCMAHON. I did. I called Mr. Lay and explained to him that although I was unaware of any of the facts in her letter, whether they had merit or not, I did validate that Ms. Watkins was in fact a reputable source and employee and she should be listened to with——

Chairman TAUZIN. So you did vouch for her to Mr. Lay?

Mr. MCMAHON. That is a fair assessment.

Chairman TAUZIN. In the letter, she says that, ''Skilling is resigning for personal reasons, but I think he wasn't having fun, looked down the road and knew this stuff was unfixable and would rather abandon ship now than resign in shame in 2 years.'' Do you concur with that analysis?

Mr. MCMAHON. First off, I am not sure that was in her one-page letter.

Chairman TAUZIN. It is in the memo.

Mr. MCMAHON. Which I did not see. She shared me with her one-page letter, and I don't know——

Chairman TAUZIN. Here is what is confusing to me, and I want you to tell me what you know about who knew this stuff. We learned from the Powers report and our own investigation that there were numerous, a rather healthy number of, employees of Enron who were investing in these deals. Ms. Ann Yaeger while still employed with Enron was invested in South Hampton to the tune of a $2,900 investment that turned into $500,000 in 6 weeks. Mr. Glisan, Ms. Mordaunt invested each $5,800; they got a million dollars in 6 weeks. They were employees of Enron. Mr. Kopper is

an employee of Enron. Mr. Fastow, not just an employee, he is the guy in charge of making recommendations of who is going to move up the ladder. He does a peer review, doesn't he? Pretty responsible.

Mr. MCMAHON. That is correct.

Chairman TAUZIN. In fact, you complained to Mr. Skilling you were worried about your bonuses.

Mr. MCMAHON. That is correct.

Chairman TAUZIN. Because of your problems with questioning Mr. Fastow's dealing, is that correct?

Mr. MCMAHON. Yes. The conflict of interest that was presented by Mr. Fastow sitting on top of the entire financial organization and having interest in the general partner was problematic on many fronts.

Chairman TAUZIN. What is confusing to me, amazing I think to all of us as we examine this is who knew that all these employees—did Mr. Skilling know that Mr. Fastow was in a position where he could, in fact was, threatening to punish people because they were negotiating too well for Enron against him and his partnerships, when he himself was an officer of fiduciary capacity with Enron? Did Mr. Skilling know that?

Mr. MCMAHON. Certainly, Mr. Skilling knew the structure of the organization as well as——

Chairman TAUZIN. Did Mr. Lay know that?

Mr. MCMAHON. I don't know what Mr. Lay's knowledge was.

Chairman TAUZIN. Did Mr. Lay know about all these employees investing in these partnerships and making these outrageous returns?

Mr. MCMAHON. Again, I don't know what Mr. Lay knew, but I, for one, was certainly surprised about the additional employees.

Chairman TAUZIN. Mr. Mintz, maybe you can help me here. Did either one of you catch some heat for attempting to disclose to other people in the corporation the kind of monies these people were making while they were still members of the Enron family, working for the company?

Mr. MINTZ. I caught some heat from Mr. Kopper when I sent that March memo to Mr. Buy and Mr. Causey.

Chairman TAUZIN. In fact, didn't Mr. Kopper contact one of you about the Enron/Wind deal?

Mr. MINTZ. Yes.

Chairman TAUZIN. Was it you, Mr. Mintz?

Mr. MINTZ. Yes, Mr. Chairman.

Chairman TAUZIN. And Mr. Kopper, what was he trying to get from you? Apparently, Enron/Wind—you were negotiating with someone else, right?

Mr. MINTZ. That is correct.

Chairman TAUZIN. What was he trying to learn from you?

Mr. MINTZ. That the company was negotiating with a third party, and a colleague of mine was representing the company, and Mr. Kopper came to me and asked me if I could find out some information as to the status of the negotiation with the third party.

Chairman TAUZIN. On behalf of whom?

Mr. MINTZ. On behalf of LJM.

Chairman TAUZIN. On behalf of the partnership?

Mr. MINTZ. That is correct.

Chairman TAUZIN. So he was trying to get you to give him inside information about the third party transaction so he could be better positioned to negotiate his deal for himself? Is that the deal?

Mr. MINTZ. One could draw that conclusion.

Chairman TAUZIN. What did you tell him?

Mr. MINTZ. I told him a couple of things. I told him, one, I was an employee of Enron and Enron was my client. And, two, that the transaction was being represented by one of the finest lawyers in the company, Lance Shuler, and that if he wanted to talk with anybody, he should talk with Lance.

Chairman TAUZIN. And at one point, you went to Jim Derrick, didn't you, the general counsel for Enron, to talk about the dysfunctionality of this arrangement, where you had Enron employees negotiating on both sides of the table. In fact, with Ms. Yaeger—it was really strange here—she is negotiating on one side of the table, and her fiance is on the other side of the table, is that right?

Mr. MINTZ. That is correct.

Chairman TAUZIN. And the eventually signed one document as husband and wife later on, on either side of the table, right?

Mr. MINTZ. That is my understanding.

Chairman TAUZIN. You complained about that dysfunctionality to Jim Derrick, the general counsel from Enron. Did you get any help?

Mr. MINTZ. Again, Mr. Chairman, as I said before, I saw this dysfunctionality on a regular basis, and I wanted to bring it to Mr. Derrick's attention, because he didn't see it on day-to-day basis.

Chairman TAUZIN. Where is the disconnect? Why were you having such a great deal of trouble getting this information to the right people who might be able to do something about it? Were there people blocking you in the middle? Is Mr. Lay correct that he was being deceived by someone, that he didn't know this was going on? I mean that is basically what he told the Powers' investigators in his interviews, that he was deceived by his own managers, his own people in the corporation, didn't know what was going on, didn't understand all this dysfunctionality and these conflicts of interest. Is that correct?

Mr. MINTZ. Mr. Lay's statement?

Chairman TAUZIN. Yes.

Mr. MINTZ. I don't know.

Chairman TAUZIN. Mr. McMahon, you talked to Mr. Lay personally, did you not, and you vouched for Ms. Watkins, and you told him to pay attention to her concerns, did you not?

Mr. MCMAHON. I did. As far as Ms. Watkins' allegations, I did speak to Mr. Lay personally about that, although that was the first time I had heard of any of those allegations.

Chairman TAUZIN. Did Andy Fastow know about the letter that Sherron Watkins sent to Mr. Lay?

Mr. MCMAHON. I don't know when he found out about it, but at some point he did find out about it.

Chairman TAUZIN. Did he talk to you about it?

Mr. MCMAHON. At a very high decibel level he spoke to me about it.

Chairman TAUZIN. High decibel level. What was his problem with it?

Mr. MCMAHON. He accused me of being the ghost writer of that letter. And when I found that out, I had a fairly, again, loud exchange with him about it.

Chairman TAUZIN. In fact, when you went to complain to Mr. Skilling about the whole deal, did you get a call from Mr. Fastow right after that?

Mr. MCMAHON. I did. About 2 weeks later, Mr. Fastow called me into his office and, as I testified earlier, he indicated that he was unsure at this point in time whether we could continue to work together, because he said, ''You should assume everything you say to Mr. Skilling gets to me.''

Chairman TAUZIN. In other words, it doesn't help you to complain to Mr. Skilling, because he comes right to me with the complaint.

Mr. MCMAHON. His comment was, ''Everything Mr. Skilling says I hear about.''

Chairman TAUZIN. So the message was, ''Go get another job, because you can't work with us. You are messing in our deals, and everything you tell him is going to come to me anyhow, so it is not going to do you any good to go report on me,'' right?

Mr. MCMAHON. Well, again, I don't know what his intent of the message was, but he clearly was telling me he was very aware of the conversation I had.

Chairman TAUZIN. So you got bumped, you are not treasurer anymore. Who took your place?

Mr. MCMAHON. Mr. Glisan took my place.

Chairman TAUZIN. Mr. Glisan? Who did he report to?

Mr. MCMAHON. At the time, I believe he reported to Mr. Kopper.

Chairman TAUZIN. And Mr. Kopper is working for Chewco.

Mr. MCMAHON. As I have come to determine now, apparently Mr. Kopper has an investment in Chewco.

Chairman TAUZIN. So is it fair to say that you are complaining, giving them trouble, they move you over to another spot and put somebody in who is working with them?

Mr. MCMAHON. Certainly, Mr. Glisan was working with Mr. Kopper when he took that role.

Chairman TAUZIN. Is he the same person that did not give the side agreement to Arthur Andersen? Mr. Bauer?

Mr. BAUER. The side agreement was withheld. Mr. Glisan gave us the document that the side agreement would have been appended to.

Chairman TAUZIN. So Mr. Glisan gave you the document without the side agreement. He is the guy, he gets the job as soon as Mr. McMahon is moved out of the way, right? That is the picture we get? I think we are beginning to understand this. Thank you very much, Mr. Chairman.

Mr. GREENWOOD. The Chair thanks the gentleman. The Chair recognizes the gentleman from Michigan, Mr. Stupak, for 5 minutes.

Mr. STUPAK. Thank you, Mr. Chairman. Mr. McMahon, as COO, chief operating officer, what are your duties and responsibilities?

Mr. MCMAHON. A week into it, my duties right now are predominantly focused on attempting the company to reorganize——

Mr. STUPAK. Okay. If we didn't have this mess, as COO, what would you be doing? What are your responsibilities as a COO of Enron? And not right now, I mean——

Mr. MCMAHON. But right now is pretty important. We happen to be in bankruptcy.

Mr. STUPAK. There must be a written——

Mr. MCMAHON. And so the majority of my responsibilities right now are working with the Creditors Committee and reorganize the company to emerge——

Mr. STUPAK. Let me ask it this way: Is there a written description of a COO for Enron?

Mr. MCMAHON. Not that I am aware of.

Mr. STUPAK. In Sherron Watkins' memo, she states, "Cliff Baxter complained mightily to Skilling and all those who would listen about the inappropriateness of our transactions with LJM." Did any of you, Mr. Bauer, Mr. McMahon, Mr. Mintz, talk to Cliff Baxter about his complaints, and is there any documentation of those conversations, any written documentation or oral preservation through recording or anything like that? Start with you, Mr. Bauer.

Mr. BAUER. I was unaware of Mr. Baxter's concerns about LJM.

Mr. STUPAK. Mr. McMahon?

Mr. MCMAHON. As I testified earlier, I had a conversation with Mr. Baxter about my concerns, and he acknowledged the conflicts, but I was not aware of the conversations he had with Mr. Skilling.

Mr. STUPAK. So he acknowledged the conflicts, but what else did he say, Mr. Baxter?

Mr. MCMAHON. Our discussion was mostly focused on—and this was right before I met with Mr. Skilling—the concerns I had as they manifested themselves in the Finance Department. He acknowledged that there were conflicts. When I expressed my concerns he understood them, and he was the one actually who encouraged me directly to go see Jeff directly to try and get it resolved, Mr. Skilling.

Mr. STUPAK. Mr. Mintz?

Mr. MINTZ. I had lunch with Mr. Baxter about a month before he had left the company, and we talked about LJM, and I shared with him my concern about the dysfunctionality. And Mr. Baxter was concerned about it and made the comment to me that he didn't understand why the board was allowing Andy to do this.

Mr. STUPAK. Did Mr. Baxter——

Mr. MINTZ. It was never memorialized.

Mr. STUPAK. Pardon?

Mr. MINTZ. It was never memorialized.

Mr. STUPAK. Memorialized? Did any memos from Mr. Baxter or anything like this to either one of you gentlemen about the meetings or anything at all about his concerns in writing?

Mr. MCMAHON. Not that I am aware.

Mr. STUPAK. Okay. Mr. McMahon, you told us all about the people that you contacted about your concerns about Mr. Fastow's conflict of interest. You took personal abuse from Mr. Fastow, and no one, not Mr. Skilling, Mr. Causey, Mr. Buy, Mr. Lay, Mr. Sutton, not one lifted a finger to do anything to get you out of the way.

You even told Mr. Sutton that Mr. Fastow would be making as much as $15 million, did you not?

Mr. MCMAHON. I think it was $10 million to $20 million per year, that is correct.

Mr. STUPAK. Okay. And as Chairman Tauzin pointed out, it basically got so bad that you gave Mr. Skilling an ultimatum: Either he had to fix it or you would get a new job, is that right?

Mr. MCMAHON. That is correct. I asked him either to remedy the situation or move me within the company.

Mr. STUPAK. And that is when shortly thereafter Mr. Fastow called you in and said you couldn't work together any longer?

Mr. MCMAHON. That is correct.

Mr. STUPAK. Okay. And then about that—shortly thereafter then Mr. Skilling offered you a new job, is that correct?

Mr. MCMAHON. That is correct, yes.

Mr. STUPAK. And that new job was what?

Mr. MCMAHON. It was chief operating officer of a new e-commerce group that we had set up, called Enron Networks.

Mr. STUPAK. Mr. Mintz, if I can go back with your lunch with Mr. Baxter, was it an attorney-client type lunch or was it a free flow of discussion? Did you feel some of this was privileged, the conversation?

Mr. MINTZ. I looked at it as two friends getting together for lunch.

Mr. STUPAK. And can you explain anymore what was discussed in any detail? Can you give any more details of what was discussed over this lunch? It was about a month before he left, you said.

Mr. MINTZ. That is correct. We touched upon that topic. Clearly, we had the conversation, but we talked about a number of different things, and the majority of the lunch didn't dwell on the LJM issue.

Mr. STUPAK. Okay. Was it mostly LJM, Chewco, JEDI or mostly LJM?

Mr. MINTZ. It was more focused on Andy running a private equity fund that was transacting with Enron.

Mr. STUPAK. Then I take it he was very concerned about this private transaction that was taking place with Enron?

Mr. MINTZ. He expressed just bewilderment about why the board was allowing this to happen, why they were allowing Andy to do it.

Mr. STUPAK. Thank you.

Mr. GREENWOOD. Time of the gentleman has expired. The Chair recognizes himself for 5 minutes. Mr. McMahon, if appears that Lea Fastow, Andy's Fastow's wife, performed certain management tasks for Chewco. We are going to hand you a document, staff is bringing the document, that is not in the binder. If you take a look at—and I would ask unanimous consent that the two documents be placed in the record.

If you take a look at the two documents we are about to distribute to you, you will see a facsimile letter dated October 13, 1998, from Lea Fastow to Michael Kopper regarding bank account balances for the various partnerships and corporations that made up the Chewco Partnership and an e-mail dated April 10, 1998 from Bill Dodson, Kopper's domestic partner and business partner

in the Chewco partnerships, where he provides certain bank account information, and he writes, quote, "Send lots of," and then that is followed by seven dollar signs. Do you know what compensation Mr. Fastow received—Mrs. Fastow received for her services to Chewco?

Mr. MCMAHON. I do not know that.

Mr. GREENWOOD. Mr. Mintz, do you know that?

Mr. MINTZ. No, Mr. Chairman.

Mr. GREENWOOD. Okay. Enron made an $2.6 million tax indemnity payment to Chewco in September 2001. The Powers report states that there is credible evidence that Fastow approved this payment to Chewco, even though Enron's in-house counsel advised him, unequivocally, that there was no basis in the original 1997 purchase agreement for the payment and that Enron had no legal obligation to make that payment. That is from page 65 in the binder. Do you know which in-house counsel advised Fastow that Enron did not have to make the payment?

Mr. MCMAHON. I am not aware of which counsel Mr. Powers was referring to here.

Mr. GREENWOOD. Do you know why Fastow would ignore his attorney's advice and authorize an unnecessary $2.6 million payment?

Mr. MCMAHON. No, I do not.

Mr. GREENWOOD. I would assume you can't conclude then whether this was in Enron's interest for this payment. You don't know anything about this.

Mr. MCMAHON. I really don't know anything about it, Congressman.

Mr. GREENWOOD. Look on page——

Mr. MINTZ. Mr. Chairman, I am sorry to interrupt you, but I have got some insight into that, because I was that in-house counsel.

Mr. GREENWOOD. Be delighted to hear from you, sir, Mr. Mintz.

Mr. MINTZ. I had worked on the original tax indemnification back in 1997, which was not unusual when you had a partner and there was a disconnect between income and cash distributions. What that indemnification agreement provided for was that if there was income without the attendant cash, there would be a cash distribution made to the partner. However, when that particular partner was able to claim tax benefits, that cash would be paid back. So in the tax parlance, it just took care of a timing issue, not a permanent issue.

Mr. GREENWOOD. So does this appear proper to you, appropriate to you?

Mr. MINTZ. When the Chewco was being bought out, the transaction closed, and shortly thereafter Michael Kopper came to me—I am sorry, his accountant called me and said that Chewco was looking for an indemnification payment. And I said, "Well, if there is any money being paid, it should go back to Enron, because there were some small payments before that time." And in fact I lost my temper with his accountant, because I said, "You know how the indemnification agreement read, educate your client and leave me alone."

It didn't go away, and Michael was insistent that the indemnification agreement was written incorrectly. I consulted with counsel from Vinson & Elkins, who I worked with on the indemnification. They confirmed my reading and understanding of it, and I reported back to Michael's accountant about that. Shortly thereafter, I got a call from Mr. Fastow. He said, "I understand there is a problem on the tax indemnification agreement." I said, "Andy, there is no problem, it reads correctly, and this was supposed to take care of a timing issue." So Andy said, "Well, I really don't have any insight into the Chewco deal, Mr. Skilling does, Jeff does, and I will go talk to Jeff about it."

A couple days later, Andy called me back and said, "I spoke to Jeff, and Jeff said the economics of the transaction with Chewco were to provide an after-tax return, and therefore the tax gross payment, if you will, was supposed to be made." I said, "Andy, my understanding from the accountants on this is that it would have a cost to the company of a million to $2 million," and he said, "That's what the arrangement was."

Mr. GREENWOOD. Would you consider this to be more dysfunctionality? If you saw a man come into a bank with a hood over his head and a gun and take out a bag of money, would you call that dysfunctionality?

Mr. MINTZ. I was very frustrated and disappointed.

Mr. GREENWOOD. Quickly, Mr. McMahon, as you may know, many officers and directors of Enron have now professed utter shock at Mr. Fastow's compensation from these partnerships. Despite his role as general managing partner, tell us about how these private equity funds normally work and what your own estimate was of Mr. Fastow's compensation without ever being told about the numbers specifically?

Mr. MCMAHON. The compensation of general partners in private equity funds I think are fairly standardized across the industry, the private equity fund industry, and that is essentially whereby the general partner gets—the rule of thumb is a 2 percent annual fee on the total funds raised and then a 20 percent promote or carried interest related to earnings of the fund above some certain benchmark.

Mr. GREENWOOD. Do the math. What did that amount to for Mr. Fastow?

Mr. MCMAHON. Based on my understanding of LJM2, which was about a $300 million fund, 2 percent of that is $6 million a year for the GP fee. And then if they had standard private equity returns, which are typically in excess of 30 percent, there could be another $15 million or so earned for the general partner.

Mr. GREENWOOD. Is it reasonable to have expected that Mr. Skilling to have had a good idea of Fastow's compensation in LJM2, not of LJM2?

Mr. MCMAHON. I don't know how familiar Mr. Skilling was with private equity compensation or not, but it is pretty standardized in the industry.

Mr. GREENWOOD. My time has expired. The Chair recognizes the gentlelady from Colorado, Ms. DeGette, for 5 minutes.

Ms. DEGETTE. Thank you, Mr. Chairman. Mr. Bauer, you said in your testimony that Enron withheld the information from you

about the side agreement, which you were later horrified to find. Who was it that withheld that information from you?

Mr. BAUER. Congresswoman, I don't know who withheld the——

Ms. DEGETTE. But who was responsible for giving you the information?

Mr. BAUER. Mr. Glisan was responsible for giving us the documentation related to that.

Ms. DEGETTE. So far as you are concerned, it was Mr. Glisan who didn't give it to you.

Mr. BAUER. It is fair to say that we did ask him for all the documentation.

Ms. DEGETTE. How many of these SPEs did you deal with in your role?

Mr. BAUER. None of the Raptor or LJM1 transactions or things like that, but I have seen——

Ms. DEGETTE. Do you have an estimate? Ten, 20?

Mr. BAUER. Yes. A dozen, 20, something like that.

Ms. DEGETTE. A dozen? Okay, 20-something? And how did you go about collecting information for these various entities?

Mr. BAUER. The typical process that I employed was to have a discussion with the transaction support person at Enron who would describe the transaction, we would provide accounting advice——

Ms. DEGETTE. And they would give you the documentation?

Mr. BAUER. [continuing] and they would give us the documentation on it.

Ms. DEGETTE. And so you would assume you were getting the correct documentation.

Mr. BAUER. That is correct. And we would typically ask for the executed copies at the completion of the transaction.

Ms. DEGETTE. Okay. Mr. McMahon, I believe you told Chairman Tauzin that you had discussed the Sherron Watkins memo with Mr. Lay; is that correct?

Mr. MCMAHON. It is not quite accurate. I discussed Ms. Watkins' credibility.

Ms. DEGETTE. You discussed Sherron Watkins and her credibility with Mr. Lay.

Mr. MCMAHON. That is correct.

Ms. DEGETTE. And I assume that was after Mr. Lay had received her memo.

Mr. MCMAHON. That is correct.

Ms. DEGETTE. So when was that?

Mr. MCMAHON. I am not quite certain of the dates, but it was a day or two after Ms. Watkins claimed authorship of the letter with Mr. Lay.

Ms. DEGETTE. Did Mr. Lay tell you or had you seen Ms. Watkins' memo? Did you know what was in her memo?

Mr. MCMAHON. I saw the one-page letter that she had written anonymously to Mr. Lay.

Ms. DEGETTE. Okay. And so you were aware of the allegations in general that she was making.

Mr. MCMAHON. Yes. What was in that letter I was aware of when I spoke to Mr. Lay.

Ms. DEGETTE. Right. Okay. Now, did you take that opportunity, when you were meeting with Mr. Lay a day or two after the Wat-

kins letter, to tell him about your conversation in March of 2000 with Mr. Skilling that we have been talking about here today, where you said it is not in the best interest of the shareholders to be doing these kind of deals?

Mr. MCMAHON. At the time——

Ms. DEGETTE. Sir, yes or no, did you?

Mr. MCMAHON. Did I have a conversation with——

Ms. DEGETTE. Yes. Did you talk to him about your concerns about these deals?

Mr. MCMAHON. I did not talk to Mr. Lay with the concerns—with the meeting I had with Mr. Skilling a year and a half earlier, no.

Ms. DEGETTE. Okay. Did you talk to him about your concerns in general about these LJMs?

Mr. MCMAHON. Now, I was not aware—I am not aware of any of the allegations Ms. Watkins made in her letter, so——

Ms. DEGETTE. No, but you had concerns way back in March of 2000. In fact, you said that you thought it was a potential breach of your fiduciary duty to have to work on both sides of these deals.

Mr. MCMAHON. Well, the allegations that Ms. Watkins made in her——

Ms. DEGETTE. No, I know, but I am talking about you, because you had concerns in March of 2000, and now here is Sherron Watkins coming forward with concerns over a year later, well over a year later. Did you take the opportunity then to say to Mr. Lay, ''You know, back a year and a half ago, before I got transferred, I also had some concerns about the company's financial structures.'' Did you talk to him about it?

Mr. MCMAHON. No. Ms. Watkins' and my concerns were radically different. Mine were about structural management issues on conflicts; hers were about specific accounting matters.

Ms. DEGETTE. Right. Well, okay. But I am just saying because you had the bully pulpit, here you are talking to Mr. Lay. Did you ever talk to Mr. Lay about your concerns about these financial matters?

Mr. MCMAHON. No. The matters I spoke with Mr. Skilling about and Mr. Sutton about were with those two.

Ms. DEGETTE. Okay. Now, did you ever prepare an analysis of Chewco's distributions purchase interest in JEDI on behalf of—let us see, who would it have been on behalf of? To Mr. Fastow?

Mr. MCMAHON. I am not so sure if I personally did that, but someone in my group prepared an analysis when we were considering the Chewco buyout.

Ms. DEGETTE. Okay. If you will look at exhibit 28 in your notebook, that is a memo that says, ''Andy, here is my analysis of the distributions purchase of Chewco's interest in JEDI. I am showing you the numbers Jeff M. gave you.'' I assume that is you. Is that you?

Mr. MCMAHON. It is not my memo, so——

Ms. DEGETTE. Well, did you give him numbers?

Mr. MCMAHON. I did give him an analysis of the Chewco buyout.

Ms. DEGETTE. Okay. Did you ever find out what happened with your analysis after that time?

Mr. MCMAHON. You mean did I ever find out what ultimately got executed?

Ms. DEGETTE. Yes.

Mr. MCMAHON. I found out when the Special Committee report came out last week.

Ms. DEGETTE. So you didn't find out the result of this until last week?

Mr. MCMAHON. No.

Ms. DEGETTE. Okay.

Mr. MCMAHON. I had moved out of the treasurer role apparently when——

Ms. DEGETTE. Okay. I just have one last question for you, Mr. Mintz, and that is your supervisor, Mr. Derrick, had been a former partner at Vinson & Elkins, correct?

Mr. MINTZ. That is correct.

Ms. DEGETTE. And you went to Mr. Derrick, and you told him about the concerns you were seeing, correct?

Mr. MINTZ. I was bringing—I advised him on what was going on on the 20th floor.

Ms. DEGETTE. When was that?

Mr. MINTZ. I think our first formal meeting was in March of 2001.

Ms. DEGETTE. Okay. And you told our committee staff that when you told him about all of this, he was just sort of poker-faced, didn't say anything, right?

Mr. MINTZ. That is correct.

Ms. DEGETTE. And so it was after you expressed those concerns to him that you went out and hired outside counsel, going around your supervisor.

Mr. MCMAHON. We had a subsequent meeting, and then after that time, you are correct, Congresswoman, I did hire Fried Frank.

Ms. DEGETTE. So you had a couple meetings with him, you didn't get satisfaction. You went out of the line really and instead of hiring Vinson & Elkins, which was Enron's attorney, you went and got independent counsel, correct?

Mr. MINTZ. That is correct.

Ms. DEGETTE. And just to finish, Vinson & Elkins was the law firm that prepared the response to the Sherron Watkins memo, whistleblower memo, correct?

Mr. MINTZ. Correct.

Ms. DEGETTE. Thank you, Mr. Chairman.

Mr. STEARNS [presiding]. I thank the gentlelady. Mr. Mintz, where was your office? You were the general counsel. Where was your office in this building relative to Mr. Fastow?

Mr. MINTZ. Mr. Fastow was on the 50th floor where many of the executives were, and I was on the 20th floor where a number of the Global Finance employees were.

Mr. STEARNS. Okay. I just call your attention to document number 23 and document number 2 in the notebook. These are quite detailed documents, memorandum, inter-office memorandum. It appears you have had several conversations with Mr. Fastow about issues relating to disclosure of his interests, Mr. Fastow's interests and compensation from these LJM partnerships. And then you wrote these memos, which are quite detailed. It seems like you could also get up on the elevator and talk to him, and I wonder about these memos. In these conversations you had, is it fair to say

that Mr. Fastow was interested in trying to minimize his disclosure to the greatest extent possible?

Mr. MINTZ. I think that is a fair description.

Mr. STEARNS. And, you know, I look at some of your memos here. You sort of point out to him some of the steps taken to minimize any related party and proxy disclosure in document number 2 and document 23. "The decision not to disclose in this instance was a close call," you said. "Arguably, the more conservative approach would have been to disclose the amount of your interest." So, obviously, these memos seem to be a memorandum for the record, plus you have had conversations. Did Mr. Fastow ever suggest a reason for wanting to keep the disclosure of his compensation, how much money he was making, and interest a secret, particularly from Mr. Skilling?

Mr. MINTZ. He did.

Mr. STEARNS. And what did he say to you?

Mr. MINTZ. He said that if Jeff ever knew how much he made from the Rhythms Net transaction, he would have no choice but to shut down LJM.

Mr. STEARNS. In fact, did Enron ever disclose Mr. Fastow's economic interest or compensation from these partnerships and the transactions prior to October 2001 when it fired him?

Mr. MINTZ. No monetary figure was provided prior to that time.

Mr. STEARNS. Okay. Mr. Fastow never did disclose, even to you, the amount of his compensation from the LJM deals, is that correct?

Mr. MINTZ. That is correct.

Mr. STEARNS. Did you ask Mr. Causey to raise the issue of Mr. Fastow's compensation with the board of directors at his February 12, 2001 meeting?

Mr. MINTZ. I did.

Mr. STEARNS. You did. Okay. Did Causey raise it too?

Mr. MINTZ. With the board at that meeting?

Mr. STEARNS. Did Mr. Causey raise it to the board?

Mr. MINTZ. No, sir.

Mr. STEARNS. Okay. Mr. McMahon, prior to firing Glisan, you had a conversation with Mr. Glisan where you ask him if he any interest in the LJM partnerships. What did he say to you?

Mr. MCMAHON. This is prior to his termination. He said he had no interest. Actually, my question to him was a little broader, because I was not aware of all the partnerships, so I said, "I want to make sure that this new management team doesn't have any baggage, and do you have any interest in any of these partnerships? I don't even know the names to ask you, but you know what I am asking, whether it is direct or indirect."

Mr. STEARNS. So he knew what you were talking about.

Mr. MCMAHON. There is no question he knew what I was talking about.

Mr. STEARNS. And so he didn't tell the truth to you.

Mr. MCMAHON. Well, he responded no to that question.

Mr. MCMAHON. Okay. Would you consider that he was not telling the truth?

Mr. MCMAHON. He responded no to the question. Subsequently, I did learn that he was in fact an investor in one of these LJM partnerships.

Mr. STEARNS. So it would appear to me that is why you fired him.

Mr. MCMAHON. Yes. The grounds of Mr. Glisan's termination I believe were related to a violation of the code of ethics, or code of conduct, sorry.

Mr. STEARNS. Mr. McMahon, I have a memo which is number 9, and it has been gone over a couple of times, which is some of the memo is talking about your negotiations with Mr. Fastow with Enron, and also talking about, I guess, some of your conversation with Mr. Skilling. As a result of this memo, did you feel uneasy about the Enron stock at all?

Mr. MCMAHON. No, not at the time. My concerns, frankly, were related to internal management of a conflict. I did not see this being a large issue from a stock price perspective.

Mr. STEARNS. We have a schedule of March 2000, which is your calendar, which is tab number 10, I think, in which it shows that you met with numerous people—Mr. Skilling, with Mr. Fastow—all during this period, in which you also wrote this memo, which is document number 9 in which you are talking with these people. And looking at the calendar and also looking at your notes, my first impression is that you had some concern here about Enron, its stock and its partnerships, and there seems to be some apprehension. Would that be a fair assumption?

Mr. MCMAHON. I don't think that is a fair assumption. My concern was how the situation was affecting the management of Finance Department internally.

Mr. STEARNS. What does that mean?

Mr. MCMAHON. Meaning that it was disruptive the way that the organization was set up, with Mr. Fastow and his personal interests, et cetera, et cetera, and him being the chief financial officer of the company. I did not, at that point in time, have concerns on the stock.

Mr. STEARNS. Now, I noticed that you had a sale of a large block of your stock, up to $1.8 million, that was exercised on March 16, and I guess the sale was on March 16. This is based upon insider trading list. I have Mr. Baxter had a sale of almost a million dollars on March 22. Mr. Fastow had a sale on March 27 of almost $7.5 million. Then before that, on March 27, he exercised that option. So I mean there was a lot of insider trading as a result of all these activities. And I am just—I don't know, I am just asking, based upon the insider trading and some of the memos that you wrote to yourself as well as the calendar and the people you met with. Is it possible that some alarms, some flags went up and suddenly people start saying, "Wow, I better start moving on here and cash in my chips." I mean that is just an observation. And my time has expired, and would you like to respond? You are welcome to.

Mr. MCMAHON. I would like to respond to that.

Mr. STEARNS. Sure.

Mr. MCMAHON. I can't respond to everyone else's stock sale program, but personally I have a program of diversifying my investments. Generally speaking, when our unvested option vest, I gen-

erally sold them in the market. And given the other activities just described, it wouldn't surprise me at or around that point in time there was a vesting date that may have occurred.

Mr. STEARNS. Okay. Mr. John, for questions?

Mr. JOHN. Yes. Thanks, Mr. Chairman. I have a quick question, both to Mr. McMahon and Mr. Mintz. Give me a short description of Mr. Skilling's management style. I mean you guys worked with him every day.

Mr. MINTZ. Congressman John, I did not have a working relationship with Mr. Skilling, so I really—I can't answer——

Mr. JOHN. You never interacted with him or had meetings with him at any time?

Mr. MINTZ. No, sir.

Mr. JOHN. So you don't have an opinion formed because of your interactions with him about his management style?

Mr. MINTZ. Really, my only dealings with Jeff were in a social setting, company Christmas party.

Mr. JOHN. Mr. McMahon?

Mr. MCMAHON. My description of Mr. Skilling's management style would be he was an intense, hands-on manager.

Mr. JOHN. Intense, hands-on. The New York Times this morning described him as the, quote, "ultimate control freak," this morning. Would you agree with that?

Mr. MCMAHON. I did not actually catch that article, but——

Mr. JOHN. It was there.

Mr. MCMAHON. [continuing] I think I stand by my intense, hands-on description.

Mr. JOHN. In fact, it goes on to say, "The sort of hand-on corporate leader who kept his fingers in all pieces of the puzzle." Do you agree generally with——

Mr. MCMAHON. My description is Jeff was actively involved in the businesses that Enron was in.

Mr. JOHN. Okay. I have got one final question to ask, and this question is actually from Congresswoman Jackson Lee who is not a member of this committee, who cannot ask a question, but I have decided that it is a very good question, and I would like to ask you, because she hasn't been allowed to participate in the proceedings.

Enron, itself, and many of the ex-Enron employees and retirees live in her district, in her congressional district. Do you guys have any plans, short of the bankruptcy proceedings, for interim finance relief to the ex-Enron employees and their families?

Mr. MCMAHON. When you say short of the bankruptcy, you mean short of what was authorized via the bankruptcy.

Mr. JOHN. Correct.

Mr. MCMAHON. We are actually working with the Creditors Committee on a variety of matters that include that as well. The company at this point in time, because of the bankruptcy, cannot single-handedly authorize that type of activity. But there are discussions ongoing with the Creditors Committee for some additional relief, and we are going to see where that goes with the Creditors Committee at this point.

Mr. JOHN. Okay. Will there be any voluntary help that you are aware of amongst the Enron family for some of these folks?

Mr. MCMAHON. If you are speaking about non-financial assistance, something that the employees are going to deal with——

Mr. JOHN. Correct.

Mr. MCMAHON. [continuing] I am not exactly aware of exactly what the various employee groups are planning at this point in time. But, again, the financial side of it, unfortunately, the management and the company is not in complete control at this point.

Mr. JOHN. Okay. Mr. Mintz, do you have anything to add to that?

Mr. MINTZ. No, sir.

Mr. JOHN. Okay. And, finally, my questioning and lines of questions always are always falling back on this SPE document that Mr. Skilling, who is the ultimate control freak, according to the New York Times, and a hands-on kind of guy, didn't sign. My question to Mr. Mintz is are you aware of any advice that he got—that he may have received from you or anyone else as to not—as it would be in his best interest not to sign this SPE document?

Mr. MINTZ. I am not aware of that advice, Congressman.

Mr. JOHN. Okay. That is all I have. I will yield——

Chairman TAUZIN. But would the gentleman yield a second?

Mr. JOHN. Sure, I will yield to the gentleman from Chack Bay, Louisiana.

Chairman TAUZIN. I thank my friend from Crowley. Let me, for the record, indicate that Congresswoman Sheila Jackson Lee has been a welcome guest of our committee proceedings from the beginning of this inquiry, and that we are delighted that she is with us today because of her sincere interest on behalf of her constituents living in that area. Committee rules do not allow the participation of non-members of the committee in these kind of proceedings, but we have not only welcomed her but encouraged her attendance because of her extraordinary interest, obviously, on behalf of her constituents. And I wanted to recognize her presence today and thank her again for that help she has given us.

Mr. STEARNS. Thank the gentleman. Gentleman from Oklahoma, Mr. Largent?

Mr. LARGENT. I don't have any additional questions.

Mr. STEARNS. No additional questions? Gentleman from Massachusetts, Mr. Markey, is——

Mr. MARKEY. Thank you, Mr. Chairman. Mr. McMahon, before you were transferred, you were a treasurer at Enron. You were involved in numerous frenzies to deal with cash-flow problems through SPEs. Could you describe what kinds of cash-flow problems Enron had when you were treasurer at the end of 1999 and early 200 and how they were dealt with? We are talking about some rather major crisis with potential impacts of $100 million or more.

Mr. MCMAHON. I am not sure if I know exactly what you are referring to, but as part of the whole management of the liquidity, the company cash-flow was an important issue for the company.

Mr. MARKEY. Well, let me move on. A week before the bankruptcy, when you were CFO, the company paid out retention bonuses to executives. As CFO, you would have known that the $100 million was about to be paid out. Did you also know about the imminent bankruptcy at that time, since you were CFO?

Mr. MCMAHON. The retention payments were something that was recommended and approved by the board. And, in fact, yes, they were paid out prior to the bankruptcy. And the——

Mr. MARKEY. Did you know about the imminent bankruptcy at the time that the bonuses were paid out?

Mr. MCMAHON. We knew, certainly, that the bankruptcy was one of several options that could occur.

Mr. MARKEY. Were you a beneficiary? Did you receive a bonus?

Mr. MCMAHON. Yes, I did.

Mr. MARKEY. Did you have knowledge that a bankruptcy was looming at that time?

Mr. MCMAHON. I think bankruptcy had been looming for a time period at that point in time. It was one of the many options that we were exploring.

Mr. MARKEY. As CFO, did you raise objections that bonuses were being paid with bankruptcy looming?

Mr. MCMAHON. The notion behind the retention payments, Congressman, was one that if we were to go into bankruptcy, that these key individuals would remain within the company to protect the businesses' and assets' value for the creditor.

Mr. MARKEY. You can see, though, where ordinary investors and ordinary employees would think that this was just the first class passengers in the company taking care of themselves as the other passengers would all be going——

Mr. MCMAHON. Well, again, the notion is preserve the value for all stakeholders, predominantly the creditors at that point in time. So I think that it is not uncommon in bankruptcy for these type of things to happen, and I think frequently, in the long run, the asset values are protected by keeping certain individuals around long enough to——

Mr. MARKEY. All right. Let me ask this, Mr. McMahon: Earlier, you said that you recalled that in the Marlin, Osprey and Whitewing transactions, Enron had agreed to provide these SPEs with Enron stock if there was a shortfall? Has the trigger been hit that results in Enron being required to issue stock to Marlin, Osprey or Whitewing?

Mr. MCMAHON. Yes. I believe that both the stock price trigger and the credit rating trigger have——

Mr. MARKEY. How much was issued, do you know?

Mr. MCMAHON. I don't believe any additional stock has been issued because the bankruptcy stayed all those contracts, as I understand it.

Mr. MARKEY. How much is the shortfall in those three?

Mr. MCMAHON. I do not know the answer to that.

Mr. MARKEY. Could you provide that for the record?

Mr. MCMAHON. I will be happy to provide that to the committee as soon as we know the answer to that.

Mr. MARKEY. Who are the investors and general partners in Marlin, Osprey and Whitewing?

Mr. MCMAHON. Again, I don't know the investors here today, but I will be happy to provide that to the committee when we get that information.

Mr. MARKEY. What was your relationship with Osprey?

Mr. MCMAHON. Osprey was initially put together——

Mr. MARKEY. Did you have any relationship with at all, Osprey?

Mr. MCMAHON. Yes. I was treasurer at the time that the Osprey transaction was executed.

Mr. MARKEY. What was your compensation in that deal, if any?

Mr. MCMAHON. I had no compensation in that deal whatsoever.

Mr. MARKEY. How about your relationship with Marlin or Whitewing?

Mr. MCMAHON. Actually, Osprey and Whitewing are the same.

Mr. MARKEY. Osprey and Whitewing?

Mr. MCMAHON. Marlin was a separate transaction, which was also executed when I was treasurer of the company.

Mr. MARKEY. Did you have any financial benefit that you were the beneficiary of?

Mr. MCMAHON. No, I had no financial benefit or interest whatsoever in Marlin.

Mr. MARKEY. Mr. Chairman, I thank you.

Mr. GREENWOOD. The Chair thanks the gentleman. The gentleman from Texas, Mr. Green, I believe has not yet had a second round.

Mr. GREEN. Thank you, Mr. Chairman, and, again, I want to—like my colleagues, I want to thank you for both your effort but also in allowing some of us to sit in on the hearings.

Mr. McMahon, do you believe that Mr. Fastow would act independently of Mr. Skilling? And I ask because I have a feeling that when we hear testimony in the next panel and of course whatever we find out from Mr. Fastow they might want to blame each other. But do you think they acted independently of each other or did they work together, in your relationship and your experiences?

Mr. MCMAHON. Frequently, they—as one being president and one being chief financial officer, frequently they worked together.

Mr. GREEN. Okay.

Mr. MCMAHON. I am not sure if I understand your——

Mr. GREEN. Well, I am just wondering if both in the congressional hearings, but since we are not going to hear from one but we will hear from the other, if it will be just saying, ''Oh, that was all—'' if they were so close, and it looked like, at least from the paper trail we are seeing, of course it hasn't been filled out, but it looks like they worked fairly close together.

Mr. MCMAHON. Again, I think that organizationally one was a direct report of the other, and I really can't speak to the closeness of their relationship, frankly.

Mr. GREEN. Let me ask another question. Out of concern for the former employees who received their $4,500 in severance pay and lost their life savings, were withdrawals made from the deferred compensation plan during the period when Enron's 401(k) was locked down by anyone that you could think of, like whether it be Kenneth Lay or Greg Whalley or yourself or any list of executives who received withdrawals during that period, during the lockdown?

Mr. MCMAHON. I can only speak to myself, and I had no withdrawals during that time period, but, unfortunately, I don't have that information with me on the other parties, and I would be happy to provide it to the committee.

Mr. GREEN. So you did personally have withdrawals or——

Mr. MCMAHON. No, I did not.

Mr. GREEN. You did not. Okay. Let me ask, were you allowed a line of credit as an officer of Enron?

Mr. MCMAHON. I was not.

Mr. GREEN. Okay. Are you familiar with how many officers had lines of credit? Like, for example, I know Kenneth Lay had a line of credit. Do you know if Mr. Skilling had one or Mr. Fastow?

Mr. MCMAHON. The only line of credit I am familiar with of any officers was Mr. Lay, but I am not aware of one or the other, frankly.

Mr. GREEN. And how do you know about Mr. Lay's line of credit, just from the publicity?

Mr. MCMAHON. No. Shortly after I took over as chief financial officer, Mr. Lay had a drawdown on his line of credit, and I received a phone call from our Cash Management Group to validate that that was an appropriate drawdown.

Mr. GREEN. Okay. So that while you were the chief financial officer, you didn't have any—there was no other drawdowns by any of the other executives, if there was a line of credit?

Mr. MCMAHON. I think I can—all I can respond to that is I was not aware of any other drawdowns.

Mr. GREEN. Okay. Thank you, Mr. Chairman.

Mr. GREENWOOD. The Chair thanks the gentleman and recognizes the gentleman from California, Mr. Waxman, for 5 minutes.

Mr. WAXMAN. Thank you, Mr. Chairman, and I want to join Mr. Green in thanking you for making time available to those of us who are not on this subcommittee.

Mr. Olson, we talked in my last round about these partnerships, these special entities, and I want to discuss with you the problems with mark-to-market accounting. According to press accounts, Enron pushed the limits of mark-to-marketing accounting, which allows a company to recognize all revenues upfront on a long-term contract. In order to determine the profitability of a contract, Enron had great leeway to make assumptions about future energy prices, energy use and other factors.

The New York Times reported that Enron Energy Services, or EES, deliberately used questionable revenue assumptions to inflate its profits, and the vice chairman of EES at the time that these questionable practices were occurring was Thomas E. White, who became the secretary of the Army in May 2001. A former EES employee called this accounting practice a license to print money. Mr. Olson, did Enron abuse market-to-market accounting, in your view?

Mr. OLSON. I am not an accountant, Congressman. From what I read in the press as well, there was certainly—they were stretching the limits, and I think what you are alluding to is what is called a variation on that mark-to-model accounting, where you go out and make these assumptions which may or may not work out. Everything else, if you again connect the dots, would suggest to me that they were using mark-to-market accounting very, very aggressively.

Mr. WAXMAN. Do you know whether Enron was an aberration or other energy companies are currently using the same accounting practices, as they are pushing for electricity deregulation?

Mr. OLSON. Mark-to-market accounting is used by lots of people—banks, securities firms and the like—except they are only marking to 12 months out, 18 months out and the like. There are people who do have power plant towing agreements out there, which go out to seven or 8 years where they do make a significant impact on their current earnings. But in terms of—I don't think it would tie at all to electricity deregulation. There are many companies out there using mark-to-market accounting or accrual accounting even, and they are still—they are more profitable under accrual accounting.

Mr. WAXMAN. Should we be concerned that if these accounting practices are being used at other energy companies, that they can be hiding fundamental problems as they did with Enron?

Mr. OLSON. You should be very concerned, yes.

Mr. WAXMAN. Well, I think this is a very important issue, and I hope the committee will seriously examine it.

Mr. McMahon, I want to ask you about the mark-to-marketing accounting at Enron and whether it might have been limited to EES. You were formally the president and CEO of the Enron Industrial Market. Did that division also use mark-to-marketing accounting?

Mr. MCMAHON. Yes, it did.

Mr. WAXMAN. And did other divisions or subsidiaries of Enron also use this form of accounting?

Mr. MCMAHON. To my knowledge, they did, yes.

Mr. WAXMAN. This committee has heard testimony from economists and Wall Street analysts who claim that Enron abused the use of mark-to-marketing accounting to inflate profits. In your view, did Enron abuse the mark-to-marketing accounting to inflate the appearance of profitability?

Mr. MCMAHON. I am not sure I can respond to that as a global statement, because I was not responsible for the accounting for Enron, but my understanding of the mark-to-market accounting was that was a requirement for the type of business activity that Enron's—predominantly the wholesale business was undertaking. My understanding was that was a requirement to follow that type of accounting.

Mr. WAXMAN. It was a requirement to follow that kind of accounting. Was it also helpful, to inflate profits, to use that kind of accounting?

Mr. MCMAHON. Again, I don't know whether it was applied across the board appropriately or not, but my understanding is it was a requirement for the company to follow that type of accounting for those activities.

Mr. WAXMAN. You are the president and CEO of Enron, you are the former chief financial officer of Enron. Based on what has happened at Enron, we now know what has happened at Enron, do you believe that mark-to-marketing accounting is inappropriate for energy contracts because of the difficulty in assessing what the upfront value is?

Mr. MCMAHON. I am not sure I am actually the qualified person to respond to whether that is the appropriate accounting for the activity, frankly, Congressman.

Mr. WAXMAN. Anybody else in the panel have any views on this issue? Mr. Olson?

Mr. OLSON. I think the system has been gamed so much so that Wall Street, whether you use mark-to-marketing accounting or not, will not believe the earnings. You see this in this collateral damage from the whole Enron shakeout. If you show me a dollar a share of incremental earnings, I will tell you that the market won't pay for it. You see it in certain companies right now, in Oklahoma, for instance.

Mr. GREENWOOD. The time of the gentleman has expired. Members of the panel, we thank you for your testimony. It has been a long day for you, and you are excused.

The Chair now would now call forward Mr. Jeffrey K. Skilling, former President and CEO, Enron Corporation; Dr. Robert Jaedicke, Enron Board of Directors, who is Chairman of the Audit and Compliance Committee of Enron Corporation; and Mr. Herbert S. Winokur, Jr., Board of Directors, Chairman of the Finance Committee of Enron Corporation.

Please be seated, Mr. Skilling, Mr. Jaedicke, and Mr. Winokur. Thank the witnesses for your attendance today.

Gentlemen, you are aware that this committee is holding an investigative hearing, and that it is the practice of this committee when holding an investigative hearing to take testimony from our witnesses under oath. Do any of you object to testifying under oath?

Seeing no such objection, I would advise you that under the rules of the committee and the rules of the House you are entitled to be represented by counsel. Do any of you gentlemen prefer to be—choose to be represented by counsel today? Mr. Skilling?

Mr. SKILLING. My counsel is here, Mr. Bruce Hiler and Mr. Liebler.

Mr. GREENWOOD. Your attorney may advise you during your testimony?

Mr. SKILLING. I assume so.

Mr. GREENWOOD. Mr. Jaedicke, do you have an attorney advising you?

Mr. JAEDICKE. Mr. Chairman, my counsel will be Robin Gibbs and Neil Egglestrom, and they are both here.

Mr. GREENWOOD. They are with you as well?

Mr. Winokur, do you choose to be advised by counsel today?

Mr. WINOKUR. Mr. Chairman, the same counsel.

Mr. GREENWOOD. Okay. Thank you.

In that case, if you gentlemen would rise and raise your right hands, I will swear you in.

[Witnesses sworn.]

Mr. GREENWOOD. Mr. Skilling, do you have an opening statement, sir?

Mr. SKILLING. Yes, I do.

Mr. GREENWOOD. The Chair would recognize you for 5 minutes to offer your opening statement.

TESTIMONY OF JEFFREY K. SKILLING, FORMER PRESIDENT AND CEO, ENRON CORPORATION; ROBERT K. JAEDICKE, ENRON BOARD OF DIRECTORS, CHAIRMAN OF AUDIT AND COMPLIANCE COMMITTEE, ENRON CORPORATION; AND HERBERT S. WINOKUR, JR., BOARD OF DIRECTORS, CHAIRMAN OF THE FINANCE COMMITTEE, ENRON CORPORATION

Mr. SKILLING. Thank you, Chairman Greenwood and members of the committee. My name is Jeff Skilling. I worked for Enron for over 10 years, leaving in August of 2001 after being CEO of the company for 6 months.

During my time at Enron, I was immensely proud of what we accomplished. We believed that we were changing an industry, creating jobs, helping to resuscitate an ailing energy industry, and, by bringing choice to a monopoly dominated industry, we were trying to save consumers and small businesses billions of dollars each year. We believed fiercely in what we were doing.

But today, after thousands of people have lost jobs, thousands of people have lost money, and, most tragically, my best friend has taken his own life, it all looks very different. As proud as I was of what we tried to accomplish at Enron, as I sit here today I am devastated by and apologetic about what Enron has come to represent.

I know that no words can make things right. Too many people have been hurt too much. I am here today because I think Enron's employees, shareholders, and the public at large have the right to know what happened. I have done all I can to help this investigation. I have testified for 2 days at the Securities and Exchange Commission. I have spoken on three occasions to the Special Committee of the Board and have spoken to the committee of this staff as well.

I have not exercised my rights to refuse to answer a single question, not one, and I don't intent to start now. So let me talk about Enron and its demise.

First, contrary to the refrain in the press, while I was at Enron I was not aware of any financing arrangements designed to conceal liabilities or inflate profitability. The off balance sheet entities or SPEs that have gotten so much attention are commonplace in corporate America, and if properly established they can effectively shift risk from the company shareholders to others who have a different risk/reward preference. As a result, the financial statements issued by Enron, as far as I knew, accurately reflected the financial condition of the company.

Second, it is my belief that Enron's failure was due to a classic run on the bank—a liquidity crisis spurred by a lack of confidence in the company. At the time of Enron's collapse, the company was solvent, and the company was highly profitable, but apparently not liquid enough. That is my view of the principal cause of the failure.

Now let me address some of the questions about my specific involvement in these events. First, I left Enron on August 14, 2001, for personal reasons. At the time I left the company, I fervently believed that Enron would continue to be successful in the future. I did not believe the company was in any imminent financial peril.

Second, similarly, I did not dump any stock in Enron because I knew or even suspected that the company was in financial trouble. In fact, I left Enron holding about the same number of shares that

I held at the beginning of 2001. On January 1, 2001, the start of my final year at Enron, I owned approximately 1.1 million shares of Enron stock. On August 14, the day I left, I owned about 940,000 shares of Enron stock. Indeed, in June of that year, I terminated an SEC sanctioned stock sell plan and elected to hold more Enron shares.

Third, with regard to the so-called LJM Partnerships, the Powers report criticizes me for supposedly not taking a more active role in reviewing the conflict of interest arising from the involvement in those partnerships of Enron's then CFO. I believed at that time there were adequate controls in place to manage that conflict of interest, that the controls were being complied with, and that I was discharging, to the full extent of my mandate, my obligations to the Board with respect to that process.

Fourth and finally, the Powers report also criticizes me for supposedly approving the restructuring of certain hedging transactions. The report then suggests that, "If the account of other Enron employees is accurate, that transaction was designed to conceal losses on some of Enron's investments," and that I personally may have withheld information from the Board about that restructuring.

I can state here today that I did not have any knowledge that the transaction was designated to conceal losses, and I did not do anything to withhold information from the Board of Directors of Enron Corporation.

Ours was a company that emphasized creativity but always in a manner that relied on the advice of the best people we could find, both those inside the company and the lawyers and accountants outside the company who advised us.

With that, Mr. Chairman, I am prepared to answer any questions that you may have.

[The prepared statement of Jeffrey K. Skilling follows:]

PREPARED STATEMENT OF JEFFREY SKILLING, FORMER PRESIDENT AND CEO, ENRON, CORP.

Good morning Chairman Greenwood and members of the Committee. My name is Jeff Skilling. I worked for Enron for over 10 years, leaving in August of 2001 after being CEO for six months.

During my time at Enron, I was *immensely* proud of what we accomplished. We believed that we were changing an industry, creating jobs, helping resuscitate a stagnant energy sector, and, by bringing choice to a monopoly-dominated industry, were trying to save consumers and small businesses billions of dollars each year. We believed fiercely in what we were doing.

But today, after thousands of people have lost jobs; thousands have lost money—and, most tragically, *my best friend has taken his own life*, it all looks very different. As proud as I was of what we tried to accomplish at Enron, as I sit here today, I am devastated by, and apologetic about, what our company has come to represent. I know that no words can make things right. Too many have been hurt too much.

I am here today, because I think Enron's employees, shareholders, and the public at large have a right to know about what happened. I have done all I can to help this investigation. I have testified for two days at the SEC—spoken on three occasions to the Special Board Committee—and have spoken to the staff of *this* Committee. I have not exercised my rights to refuse to answer a single question—not one. And I don't intend to start now.

So, let me first talk about Enron and its demise.

First, contrary to the refrain in the press, while I was at Enron, I was *not* aware of *any inappropriate financing arrangements, designed to conceal liabilities, or overstate earnings.* The off-balance sheet entities or SPE's that have gotten so much attention are commonplace in corporate America; and if properly established, they can

effectively shift risk from a company's shareholders to others who have a different risk/reward preference. As a result, *the financial statements issued by Enron, as far as I knew, accurately reflected the financial condition of the company.*

Second, it is my belief that Enron's failure was due to a classic "run on the bank:" a liquidity crisis spurred by a lack of confidence in the company. At the time of Enron's collapse, the company was *solvent* and *highly* profitable—but, apparently, not liquid enough. That is my view of the principal cause of its failure.

Now, let me address some of the questions about my specific involvement in these events.

First, I left Enron on August 14, 2001 for personal reasons. At the time I left the company, I fervently believed that Enron would continue to be successful in the future. I did *not* believe that the company was in financial peril.

Second, similarly, I did not "*dump*" any stock in Enron because I knew—or even suspected—that the company was in financial trouble. In fact, I left Enron holding almost the same number of shares that I held at the beginning of 2001: On January 1, 2001—the start of my final year at Enron—I owned approximately 1.1 million shares of Enron. On August 14, the day I left, I owned about 940,000 shares. Indeed, in June of that year, I terminated an SEC-sanctioned stock sale plan, and elected to hold on to more Enron shares.

Third, with regard to the so-called LJM Partnerships, the Powers Report criticizes me for supposedly not taking a more active role in reviewing the conflict of interest arising from the involvement in those partnerships of Enron's then CFO. *I believed at that time that there were adequate controls in place*—that the controls were being complied with and that I was discharging—*to the full extent of my mandate*—my obligations to the Board with respect to this process.

Fourth and finally, the Powers Report also criticizes me for supposedly "approving" the restructuring of certain hedging transactions. The Report then suggests that "if the account of other Enron employees is accurate," that transaction "was designed to conceal" losses on some of Enron's investments and that I may have withheld information from the Board about that restructuring. I can state here today that I did *not* have any knowledge that that transaction was designed to conceal losses, and *I did not do anything to withhold information from the Board.*

Ours was a company that emphasized creativity, but always in a manner that relied on the advice of the best people we could find—both those inside the company and the lawyers and accountants outside the company who advised us.

With that, Mr. Chairman, I am prepared to answer any questions that you may have.

Mr. GREENWOOD. Thank you, Mr. Skilling.

Mr. Jaedicke, do you have an opening statement, sir? You are recognized for that opening statement.

TESTIMONY OF ROBERT K. JAEDICKE

Mr. JAEDICKE. Chairman Greenwood, Congressman Deutsch, and members of the subcommittee, good afternoon, and thank you for the opportunity to address the subcommittee.

I am the Chairman of the Audit Committee of the Board of Directors of Enron Corporation. I have held that position since the mid-1980's. Let me tell you about my background. I joined the faculty of the Stanford Graduate School of Business in 1961. I served as dean of the school from 1983 to 1990, and at that time I returned to the faculty of the business school and retired in 1992.

Throughout my tenure as Chairman of the Enron Board's Audit Committee, I have been committed to ensuring that it is an effective and actively functioning body. Over the last few years, we undertook to review and strengthen our already vigorous control systems. In 1999, we began a number of initiatives to ensure that we remained a best practices Audit Committee.

Throughout 2000 and into 2001, our committee worked with Arthur Andersen to make certain we complied with the recommendations of the Securities and Exchange Commission, the New York Stock Exchange, and the Blue Ribbon Committee on Improving the

Effectiveness of Corporate Audit Committees. That effort culminated in February 2001 when the Audit Committee finalized a new charter which was approved by the full board.

Throughout that lengthy process involving both Enron management and Arthur Andersen, we implemented a series of further refinements to our corporate policies and controls. The life blood of the work of any audit committee is the development and implementation of adequate controls, many of which cross-check each other.

And the oversight function of the committee depends on the full and complete reporting of information to it. Without full and accurate information, an audit committee cannot function.

I have now read the Report of the Special Committee. What comes across to me most clearly is that the controls the Board put in place to monitor these transactions broke down. Enron management, Arthur Andersen, the internal legal department, each had a role in our systems and controls. The Report of the Special Committee sets forth many instances where they did not fulfill their duty to us.

We put in place multiple controls involving numerous parties, because we are aware that one check may not be sufficient. We could not have predicted that all controls would fail.

The Special Committee concludes that the Audit Committee and the Board failed in their duties to oversee these transactions, and that we were insufficiently vigilant. I do not agree with that conclusion.

As the Special Committee found, the Board understood that these were special transactions, and we reviewed the economic benefits to Enron. We established numerous controls to ensure that these transactions were properly structured, executed, reviewed, and reported, and the Board reasonably believed that these controls were adequate and would work.

The Board was entitled to rely on these controls. The successful implementation of these controls turned on management's and outside consultants' thorough evaluation and review of these transactions, and full reporting back to the Board.

As stated in the Report of the Special Committee, internal management and outside advisors did not raise concerns with the Board, and they regularly assured us that the transactions had been reviewed and that they were lawful and appropriate. It is now clear that management and the outside consultants failed to disclose critical information about these transactions of which they were clearly aware.

After reading the report, I would like to add that if even some of the Board's controls had worked as expected, I believe that we could have addressed these issues and avoided this terrible tragedy.

Thank you very much.

[The prepared statement of Robert K. Jaedicke follows:]

PREPARED STATEMENT OF ROBERT K. JAEDICKE, CHAIRMAN, AUDIT COMMITTEE, BOARD OF DIRECTORS, ENRON CORPORATION

Chairman Greenwood, Congressman Deutsch, and Members of the Subcommittee. Good afternoon, and thank you for the opportunity to address the Subcommittee.

I am the Chairman of the Audit Committee of the Board of Directors of Enron Corporation. I have held that position since the mid-1980s.Let me tell you about my

background. I joined the faculty of the Stanford Graduate School of Busness in 1961. I served as Dean of the Business School from 1983 until 1990. At that time, I returned to the faculty of the Business School, and retired in 1992.

Throughout my tenure as Chairman of the Enron Board's Audit Committee, I have been committed to ensuring that it is an effective and actively functioning body. Over the last few years, we undertook to review and strengthen our already vigorous control systems. In 1999, we began a number of initiatives to ensure that we remained a "best practices" Audit Committee. Throughout 2000 and into 2001, our committee worked with Arthur Andersen to make certain we complied with the recommendations of the Securities and Exchange Commission, the New York Stock Exchange, and the Blue Ribbon Committee on Improving the Effectiveness of Corporate Audit Committees. That effort culminated in February 2001, when the Audit Committee finalized a new charter which was approved by the full Board. Throughout that lengthy process, involving both Enron management and Arthur Andersen, we implemented a series of further refinements to our corporate policies and controls.

The lifeblood of the work of any Audit Committee is the development and implementation of adequate controls, many of which cross check each other. And the oversight function of the Committee depends on the full and complete reporting of information to it. Without full and accurate information, an Audit Committee cannot be effective.

I have now read the report of the Special Committee. What comes across to me most clearly is that the controls the Board put in place to monitor these transactions broke down. Enron management, Arthur Andersen, the internal legal department—each had a role in our systems of controls. The Report of the Special Committee sets forth many instances where they did not fulfill their duty to us. We put in place multiple controls involving of numerous parties, because we are aware that one check may not be sufficient. We could not have predicted that all the controls would fail.

The Special Committee concludes that the Audit Committee and the Board failed in their duties to oversee these transactions, and that we were insufficiently vigilant. I do not accept that conclusion. As the Special Committee found:

- The Board understood that these were special transactions and we reviewed their economic benefit to Enron. We established numerous controls to ensure that these transactions were properly structured, executed, reviewed, and reported, and the Board reasonably believed that these controls were adequate and would work.
- The Board was entitled to rely on these controls, and the successful implementation of these controls turned on management's and outside consultants' thorough evaluation and review of these transactions, and fully reporting back to the Board.
- As stated in the Report of the Special Committee, internal management and outside advisors did not raise concerns with the Board; regularly assured us that the transactions had been reviewed and that they were lawful and appropriate.
- It is now clear that management and the outside consultants failed to disclose critical information about these transactions of which they were clearly aware.

After reading the Report, I would like to add that if even some of the Board's had controls worked as expected, I believe that we could have addressed these issues and avoided this terrible tragedy.

A. ROLE OF THE AUDIT COMMITTEE

There has been much written of late about the role of Audit Committees, and about the performance of the Enron Audit Committee in this matter. I would like to comment about what we are and what we are not. The Audit Committee's function is one of oversight. Its responsibility is to receive reports from management and the outside auditors, to review the adequacy of internal controls, and to oversee the filing of financial statements. We do not work full time in this job. None of the members of the Audit Committee is an employee of Enron. We do not manage the Company. We do not do the auditing. We are not detectives.

We held regular meetings, at which we received reports from a broad range of management and Arthur Andersen. There is an entire body of accounting literature known to Enron management and known to Arthur Andersen about the duties of those two groups to provide information to the Audit Committee and ultimately to the Board of Directors. We were entitled to rely on the representations made to us about the appropriateness of the accounting for the partnerships, and the adequacy of disclosure. We asked questions. We provided oversight, and set direction based on the information we received. I respectfully submit that we did our job.

Arthur Andersen representatives attended each meeting of the Audit Committee. At each meeting, they made reports to us about issues of interest or concern. Further, it was my invariable practice to hold an executive session with the Arthur Andersen representatives, or at the very minimum offer one, where they could meet with us without management present. Arthur Andersen was free to report to the Committee any matters regarding the corporation and its financial affairs and records that made the auditors uncomfortable, including; (1) whether the auditors had had any significant disagreement with management; (2) whether the auditors had full cooperation of management; (3) whether reasonably effective accounting systems and controls were in place; (4) whether there are any material systems and controls that need strengthening; and (5) whether Arthur Andersen had detected instances where company policies had not been fully complied with. At each of these sessions, Arthur Andersen was given the opportunity to meet privately with the Committee outside the presence of management to discuss any of these matters. It now appears that Arthur Andersen had significant concern about Enron's financial practices, at least as early as February 2001, but failed to raise those concerns with the Audit Committee at that time.

Over the last several weeks, through disclosures by this Committee, the media, and the Report of the Special Committee of the Board of Directors, I have learned that within the management of Enron and within Arthur Andersen, there was substantial turmoil about the partnerships that are the subject of these hearings. For example, until recently, I was unaware that:

- In February 2001, Arthur Andersen officials met and raised concerns about the accounting for the partnerships;
- In the summer of 2001, an Enron in-house attorney was sufficiently concerned about the partnerships that he consulted with a separate law firm;
- In September or early October 2001, Arthur Andersen retained outside counsel and formed a consultative group regarding these partnerships;
- In October 2001, Arthur Andersen reportedly told a member of management of Enron that Enron's soon to be released earnings statement for the third quarter of 2001 could be fraudulent and could bring SEC enforcement action.

Contrast what Arthur Andersen knew and was doing during at that time with what it was telling the Audit Committee. In a February 12, 2001 Audit Committee meeting, Arthur Andersen reported:

- That Arthur Andersen's financial statement opinion for the 2000 financial statements would be unqualified. The 2000 statements would cover the first full year of existence of the LJM partnerships.
- That Arthur Andersen's opinion on the company's internal controls would be unqualified.
- That the use of structured transactions and mark to market accounting required significant judgment, but Arthur Andersen did not suggest that anything about the judgments being made was inappropriate.
- Arthur Andersen specifically reviewed with us the related party transactions, and did not indicate any impropriety with the accounting.

In our October, 2001 Audit Committee meeting, Arthur Andersen told us that there were no material weaknesses in our internal controls.

B. THE REPORT OF THE ENRON BOARD'S SPECIAL COMMITTEE

Much of the focus of the hearings this week has been on the Report of the Special Investigative Committee, which was formed by Enron's Board of Directors to examine Related Party transactions entered into by Enron Corp. The Committee's investigation was both a thorough and impartial investigation into the transactions in question.

In reading the report, I was deeply disturbed to learn of the marked lack of candor of both company management and our professional advisers concerning these transactions. The lifeblood of an effective Board is the ability to receive full and candid information by its outside advisors and management. It is clear now that substantial and critical information was in many instances concealed from the Board—and in others was affirmatively misrepresented to us—by both company management and its outside advisers. This lack of full disclosure severely undermined the Board's effectiveness and oversight ability. No Board can properly execute its duties or make informed decisions without it.

I want to highlight two critical pieces of information about these transactions that the Report concluded management did not reveal to the Board. First, the Special Committee determined in its Report that many Enron employees never disclosed to the Board that employees other than Andrew Fastow had acquired interests in, or become parties to, additional Related Party transactions with Enron. This derelic-

tion of duty is a clear violation of the existing Code of Conduct applicable to all Enron employees. Of equal importance, as the Report makes clear, is that other Enron employees apparently knew about—but did not report to the Board—the existence of these undisclosed conflicts of interest. Neither the conduct of the employees who acquired these interests, nor the conduct of others who knew of it and failed to tell the Board, is in any way excusable.

It is also apparent that Management's lack of candor was not limited simply to the non-disclosure of conflicting interests. According to the Report, many Enron employees believed that particular transactions with the LJM entities were unfair to Enron, were an improper effort to manipulate the company's financials, or were not properly being disclosed in Enron's proxy statements and financial disclosures. These are serious issues, and the Board was entitled to have them brought to its attention. These officers and employees may have made their objections known to other management, but that does not excuse their failure to bring these problems to or to notify properly the Board so that it could address them. This marked disregard for the Company's best interests—and for the Board's directives—is deeply disturbing.

With respect to the various transactions that were the subject of the Special Committee Report, I would like to make a few comments about what the Board did, why we did it, and what we knew at the time. I want to first address the current criticism directed at Enron's use of widely-accepted and well-established off balance sheet financing or special purpose vehicles to raise money. This practice is permitted by the accounting rules (if structured correctly). Many companies use off-balance sheet financing every day. Enron's extensive use of off-balance sheet financing was widely known and well-publicized.

Now, let me begin with the earliest Enron transaction at issue, which was in 1997 and involved an entity called Chewco.

1. Chewco

The Chewco transaction was part of Enron's restatement of its financial statements last November, when it was determined by Enron and Arthur Andersen accountants that Chewco was a related party that did not satisfy the accounting rules which permit an entity to remain unconsolidated. When the Board learned last fall that Chewco did not satisfy the SPE rules and Enron's financial statements had to be restated because of it, we were shocked. I do not recall the Board ever being made aware that Chewco was an affiliated transaction until last fall, and the Special Committee apparently found no evidence of anyone informing the Board of this critical fact.

The Board had relied on senior management and its external advisers, including Arthur Andersen and Vinson & Elkins, to structure and account for the Chewco transaction. The Board had no reason to question the accounting for the Chewco transaction because, as far as the Board knew, Chewco was entirely unaffiliated with Enron, and Enron's internal and external auditors would ensure that it was properly accounted for.

Yet these internal and external controls failed to bring to the Board's attention the critical fact that Michael Kopper, an Enron employee, had a interest in Chewco. To the contrary, the representation made to the Board was that Chewco was a completely unaffiliated third party. Those presenting this transaction in 1997 had to know this was untrue, and they had an obligation under Enron's Code of Conduct to disclose Mr. Kopper's involvement to the Board. According to the Special Committee Report, they did not. Had they done so, I am confident that we would have taken appropriate steps to avoid what ultimately happened.

2. LJM

With the benefit of hindsight, the Report of the Special Committee concludes that the presence of extensive, Board-initiated controls over the LJM transactions should have signaled that the LJM structures should never have been approved from the outset. I disagree with this conclusion

As noted in the Report, LJM1 and LJM2 were presented to the Board as having significant benefits to Enron. The Office of the Chairman determined that the LJM structure—with Mr. Fastow as the general partner of the LJMs' would not adversely affect the interests of the company. Senior management discussed with the Board the very real and substantial benefits to Enron of such a structure. The Board thought, based upon these presentations, that the LJM partnerships offered real business benefits to Enron that outweighed the potential risks. Even today, the Special Committee recognizes—as did the Board when it approved the LJM structure—that significant and legitimate economic benefits were presented to justify why Mr. Fastow should be permitted to assume the role that we ultimately permitted him

to assume. The Special Committee can disagree with the Board's weighing of the benefits and potential risks of the LJM structure, but it cannot fairly be characterized as a decision that the Board was not entitled to make.

I first want to note that the Board did not waive Enron's Code of Business Conduct when it approved Mr. Fastow's participation in LJM. Mr. Fastow was at all times bound by Enron's Code of Conduct, as well as its Code of Ethics, and Mr. Fastow always owed a fiduciary duty to act in the best interests of Enron Corporation. That Code of Conduct allows a senior officer to participate in a transaction in which he has a conflict of interest with Enron if the Office of the Chairman determines that this would not adversely affect the interests of the Company. Mr. Fastow was allowed to participate in LJM because the Office of the Chairman made such a determination, and the Board ratified it. This action had no affect whatsoever on Mr. Fastow's obligation to comply with all other requirements of Enron's Code of Business Conduct and its Code of Ethics as a senior officer and fiduciary of Enron, including the requirement that all LJM transactions be on terms fair to Enron and in its best interests

In addition, the Board was certainly aware of the problems that could result from Mr. Fastow transacting business with Enron as the general partner of LJM. That is why the Board put in place an added layer of strict controls specifically for transactions between Enron and LJM. The controls established for LJM include the following:

1. Enron and LJM had no obligation to do business with each other.
2. Enron's Chief Accounting Officer, Mr. Fastow's equal in the corporate structure, was to review and approve any transactions.
3. Enron's Chief Risk Officer, also Mr. Fastow's equal in the corporate structure, was to review and approve any transactions.
4. Jeff Skilling, President and Chief Operating Officer, and Mr. Fastow's superior, also was to review and approve any transactions.
5. Arthur Andersen was involved from the beginning in structuring and accounting for these transactions to ensure that they were done properly.
6. Once a year the Audit Committee reviewed the transactions that had been completed in the prior year.
7. An LJM Approval Process Checklist was to be filled out to ensure compliance with the Board's directive for transacting with LJM, including questions regarding alternative sales options, a determination that the transaction was conducted at arms-length, and review of the transaction by Enron's Office of the Chairman, Chief Accounting Officer and Chief Risk Officer.
8. Enron employees who reported to Mr. Fastow were not permitted to negotiate with LJM on behalf of Enron.
9. The Commercial, Legal and Accounting departments of Enron Global Finance were to monitor compliance with the procedures and controls, and were to regularly update the Chief Accounting and Risk Officers.
10. Mr. Fastow was not relieved of his fiduciary duties to Enron.
11. The Office of the Chairman or the Board could ask Mr. Fastow to resign from LJM at any time.
12. Mr. Skilling was to review Mr. Fastow's economic interest in Enron and LJM.
13. Enron's internal and outside counsel were to regularly consult regarding disclosure obligations concerning LJM, and were to review any such disclosures.

These are extraordinary controls. The Audit Committee was repeatedly assured by senior management and by Arthur Andersen that these controls were being followed. The Board was told, and had every reason to believe, that Jeff Skilling, Enron's President and Chief Operating Officer at the time, Richard Causey, Enron's Chief Accounting Officer, Richard Buy, Enron's Chief Risk Officer, and Arthur Andersen, Enron's auditor, were ensuring that the Board's policies were followed and that any transactions with LJM were fair to Enron and properly accounted for. The Board relied on Enron's accounting staff, external auditors and legal counsel to ensure the accuracy of Enron's disclosures in its proxy and financial statements. Unfortunately, it is now clear that our reliance—while reasonable and expected—was misplaced.

Despite the existence of these controls, the Special Committee has found that numerous critical and troubling facts about LJM1 and LJM2 do not appear to have been brought to the attention of the Board or the Audit Committee, even though LJM was generally discussed at almost every meeting and there was a formal presentation and review once a year to the Audit and Finance Committees. Some of the facts about LJM that the Special Committee found appear to have been concealed from the Board are:

1. As with Chewco, the Board did not know that Michael Kopper was involved in LJM. According to the Report, the Private Placement Memorandum—which was reviewed by Enron's in-house lawyers and by Vinson & Elkins—indicates that Michael Kopper would be involved in managing LJM's day-to-day activities. Both Enron's in-house lawyers and Vinson & Elkins, Enron's outside counsel, apparently reviewed this memorandum, but failed to inform the Board of what they learned.
2. The Board was not informed of and did not approve any other Enron employees—besides Mr. Fastow—working for or having a financial interest in LJM. It turns out that a number of other employees—in violation of the Enron Code of Conduct—did work for or took a financial interest in LJM.
3. The Board was not told that Enron sold seven assets to LJM1 and LJM2 in the third and fourth quarter of 1999, and then turned around and repurchased five of those seven assets after the financial reporting period closed. I do not believe any of those repurchase transactions were presented to the Board for review.
4. The Board was not told that Enron agreed to protect LJM from losses on any of its transactions with LJM.
5. The Board was not told that the requirement that only employees who did not report to Fastow could negotiate with LJM on behalf of Enron was ignored.
6. In early 2001, the Board was not told that the Raptor transactions were several hundred million dollars undercapitalized, or that management therefore intended to restructure those transactions requiring issuance of some 800 million additional shares of Enron stock.
7. Finally, the senior management and external advisors of Enron, on whom the Board relied for information, never reported to the Board that any of the LJM transactions were unfair to Enron, involved questionable terms, or violated any accounting rules. Instead, the Board and the Audit Committee were regularly told by those who had no personal stake in LJM that all of the controls were functioning properly, and that all of the transactions being done were properly accounted for, were at arms length and were fair to Enron.

The Report itself makes clear that the controls established by the Board were not adequately executed, and important information was affirmatively concealed from the Board. The Audit Committee reviewed all of the LJM transactions with Enron's Chief Accounting Officer each year, in the presence of Arthur Andersen, and was assured that all of the transactions were done at arms length and were fair to Enron. The Board and the Audit Committee had no reason not to trust the assurances they received.

Some now contend that we should have spent more time, and asked more questions. I can assure you that the controls and the transactions were given more than just a superficial review. Furthermore, they were reviewed by two committees. Considering the amount and seriousness of information that was concealed from us and misrepresented to us, I am not confident as I sit here today that we would have gotten to the truth with any amount of questioning and discussion. Nobody seems to be saying that they did not have an opportunity to inform us about the problems with Enron's related party transactions. They had plenty of opportunity to tell us the complete truth, we imposed numerous controls that required them to report to us fully and honestly—but they chose not to do so.

The Report recognizes that a Board of Directors can fulfill its duty to act with due care either ''through one of its Committees or through the use of outside Consultants.'' The Board was, as the Report notes, repeatedly assured by its outside auditors, Arthur Andersen, that all of the Related Party transactions were on fair terms consistent with those available to Enron from Third Parties. Importantly, this was an audited representation by Arthur Andersen—and was made to the Board even in the face of significant, and undisclosed, internal concerns at Arthur Andersen that the transactions were not in fact on arms' length terms. During the relevant period I cannot remember Arthur Andersen expressing any concerns to the Board about the fairness or legitimacy of any of the related party transactions. Instead, Arthur Andersen repeatedly assured the Board, and specifically the Audit Committee, that it had reviewed the structuring of the transactions and that it was being proactive with respect to the accounting issues involved. For example, Arthur Andersen made the following assurances to the Board:

1. In October 1999, when LJM2 was approved, Arthur Andersen assured the Audit Committee that it had spent considerable time during the third quarter reviewing a joint venture Enron was forming to assist in monetizing investments.
2. In presenting LJM2 to the Finance Committee in October 1999, senior management discussed the fact that Arthur Andersen had reviewed LJM2 and were fine with it.

3. In May 2000, Arthur Andersen reported to the Audit Committee that Enron's related party transactions were a high priority area, that Arthur Andersen would be spending additional time specifically on Enron's structured transactions and hedging vehicles, and that Arthur Andersen gets involved in these structures at the front end to discuss applicable accounting issues.
4. In December 2000, Arthur Andersen reported to the Audit Committee that there were no significant audit adjustments to be made, no disagreements with management and no significant difficulties encountered during the audit.

Arthur Andersen often mentioned that Enron was utilizing highly complex structured transactions that required significant judgment in the application of the accounting rules. Arthur Andersen assured us that they were working with their experts in Chicago to make sure that Enron properly accounted for those transactions.

All the time that Arthur Andersen and senior management were assuring the Board that the controls were all being followed and the transactions were being done at arms length and were fair to Enron, many of the controls were in fact being completely ignored. Perhaps the most egregious example of this occurred in and around February 2001. According to the Report, sometime in the first quarter of 2001 it became clear to Enron management that the Raptor vehicles were no longer creditworthy. That meant that Enron was in danger of having to take an enormous charge to earnings. Senior management, however, did not come to the Board with this extremely serious problem. At the same time, Arthur Andersen held an internal meeting involving Houston and Chicago management on February 5, 2001, in which they discussed the fact that they had serious concerns about Enron's accounting. The next week, however, when Arthur Andersen came to meet with the Audit Committee, the Report concludes that they did not mention even a single concern to us. Instead, Arthur Andersen simply reported that their financial statements opinion would be unqualified, there were no significant accounting adjustments, there were no disagreements with management and that their opinion on Enron's internal controls would be unqualified and no material weaknesses had been identified.

We now know that the Raptors were underwater by hundreds of millions of dollars in early 2001, and nobody brought that to the immediate attention of the Board or the Audit Committee. Instead, senior management entered into a transaction to provide $800 million of Enron stock in an attempt to prop up the failing Raptor structures. The Board was not told about this transaction at the time. I agree with the Report's conclusions that Arthur Andersen "failed to provide the objective accounting judgment that should have prevented these transactions from going forward." (Report, p. 24-25).

C. FINDINGS OF THE SPECIAL COMMITTEE REPORT

The Report clearly recognizes that the controls implemented by the Board were "a genuine effort by the Board to satisfy itself that Enron's interests would be protected." (Report, p. 156). Importantly, as I have discussed, had the controls been adhered to—in particular the requirements that the terms be fair to Enron and obtained at arms' length—none of the transactions criticized in the Report would, or should, have occurred. Under no circumstances should it ever have been the case that LJM was guaranteed that it would never lose money. (Report, p. 135) Under no circumstances should a transaction have been approved that offered LJM2 the "internal rates of return on the four Raptors of 193%, 278%, 2500% and a projected 125%." Report, p. 128) These returns were "far in excess of the 30% annualized rate of return described in the May 1 2000 Finance Committee"—but none of the Enron employees who knew these facts disclosed them to the Board. (Report, p. 128-29) The Board cannot be faulted for failing to act on information that was withheld from it, nor can it be faulted for failing to respond to information that was affirmatively misrepresented to it. (Report, p. 156-58).

I agree with the Report's conclusion that "[t]he evidence available to us suggests that Andersen did not fulfill its professional responsibilities in connection with its audits of Enron's financial statements, or its obligation to bring to the attention of Enron's Board (or the Audit or Compliance Committee) concerns about Enron's internal controls over the related-party transactions." (Report, p. 20) By necessity, Boards of Directors must rely—and the law allows them to rely—on outside advisers who are hired by the Board and owe their duties to the Board. As the Report found, Enron's Board of Directors "reasonably relied on the professional judgment of Arthur Andersen concerning Enron's financial statements and the adequacy of internal controls. Andersen failed to meet its responsibility in both respects." (Report, p. 25) The Report's additional findings about Andersen's inexcusable failure to fulfill its professional duties include the following:

- "It is particularly surprising that the accountants at Andersen, who should have brought a measure of objectivity and perspective to [the transactions] did not do so . . . and there is *no question that Andersen accountants were in a position to understand all the critical features of the Raptors and offer advice on the appropriate accounting treatment* . . . Indeed, there is abundant evidence that Andersen in fact offered Enron *advice at every step, from inception through restructuring and ultimately to terminating the Raptors.* Enron followed that advice." (Report, p. 132) (emphasis added)
- "Enron's outside auditors supposedly examined Enron's internal controls, but did not identify or bring to the Audit Committee's attention the inadequacies in their implementation." (Report, p. 148).
- "The Board was *entitled to rely* on assurances it received that Enron's internal accountants and Andersen had fully evaluated and approved the accounting treatment of the [Raptor] transaction . . . The involvement of Enron's internal accountants, and the reported (and actual) involvement of Andersen, gave the Finance Committee and the Board *reason to presume that the transaction was proper.* Raptor was an extremely complex transaction, presented to the Committee by advocates who conveyed confidence and assurance that the proposal was in Enron's best interests. (Report, p. 156-18)
- "The Board appears to have *reasonably relied upon the professional judgment of Andersen concerning Enron's financial statements and the adequacy of controls for the related-party transactions.*" (Report, p. 25)

These statements establish, as the Report acknowledges, that the Board could and did discharge its obligations to understand and evaluate these transactions "through its Outside Consultants," Arthur Andersen. That Andersen, in the words of the Report, "failed to meet its responsibilities in both respects" cannot be laid at the feet of the Board.

II. CONCLUSION

The Board recognizes that these transactions had catastrophic consequences for Enron—in an environment already made difficult by investments that were otherwise performing poorly in its broadband, retail energy and water businesses. In retrospect, and with the knowledge of the duplicity of its employees and the failures of its advisers, the Board deeply wishes that it had never agreed to these transactions. The Board, however, did not—and could not—have foreseen that significant information about these transactions would be withheld from it.

The Board cannot be faulted for failing to respond to information that was concealed from them, or that was actively misrepresented to them. It is not accurate to suggest that the Board "did not effectively meet its obligation with respect to the LJM transactions" when the record is replete with evidence that—without Board approval—the most senior management of Enron was willing to enrich itself at company expense, to deceive the Board and to disregard its fiduciary obligations of candor to the Company and its shareholders. Indeed, it seems evident—from a review of the Chewco, Raptor and Southhampton transactions—that no amount of process or oversight would or could have prevented the actions of these employees.

Of equal importance, there is absolutely no suggestion that the Board was in any way personally interested in these transactions. The Board acted at all times with a good faith belief that these transactions—though they presented risks—were in the company's best interests and were being carefully structured and reviewed by internal and external professionals to ensure that they were done properly.

Finally, the Board did consider these transactions carefully, attended to the risks created by Mr. Fastow's conflict of interests, and was repeatedly assured by company management and by the company's advisers that these transactions were appropriate and in the Company's best interests. While others may differ with that business judgment, it is incorrect to imply that the Board's decision to authorize the transactions was reached carelessly or without considered attention to, and good faith reliance upon, the information made available to us at the time. This is the proper role of a board of directors—but it simply was not adequate to prevent the deliberate and improper actions of certain of the Company's employees.

What happened at Enron has been described as a systemic failure. As it pertains to the Board, I see it instead as a cautionary reminder of the limits of a director's role. We served as directors of what was then the seventh largest corporation in America. Our job as directors was necessarily limited by the nature of Enron's enterprise—which was worldwide in scope, employed more than 20,000 people, and engaged in a vast array of trading and development activities. By force of necessity, we could not know personally all of the employees. As we now know, key employees whom we thought we knew proved to be dishonest or disloyal.

The very magnitude of the enterprise requires directors to confine their control to the broad policy decisions. That we did this is clear from the record. At the meetings of the Board and its committees, in which all of us participated, these questions were considered and decided on the basis of summaries, reports and corporate records. These we were entitled to rely upon. Directors are also, as the Report recognizes, entitled to rely on the honesty and integrity of their subordinates and advisers until something occurs to put them on suspicion that something is wrong.

We did all of this, and more. Sadly, despite all that we tried to do, in the face of all the assurances we received, we had no cause for suspicion until it was too late.

Thank you.

Mr. GREENWOOD. Thank you, Mr. Jaedicke.

Mr. Winokur, do you have an opening statement?

Mr. WINOKUR. Yes, sir.

Mr. GREENWOOD. You are recognized, sir.

TESTIMONY OF HERBERT S. WINOKUR, JR.

Mr. WINOKUR. Chairman Greenwood, Congressman Deutsch, and members of the subcommittee, good afternoon, and thank you for the opportunity to address this group.

My name is Herbert S. Winokur, Jr. I am Chairman of the Finance Committee of the Board of Directors of Enron, and have held that position for several years. I have been a Board member since the mid 1980's. I also was a member of the Special Investigative Committee of the Board, which issued what has become known now as the Powers report.

Let me keep my opening remarks brief. The recent events involving Enron weigh heavily on me as they do on many people. I have given them much thought. Beyond anything else, I deeply regret the impact that Enron's decline has had on the lives of so many people—our employees and our shareholders.

Like you and many others, I have been searching for explanations, answers, and lessons. I volunteered to be on Enron's Special Committee, the Board's Special Committee, because I wanted to find out what happened, what went wrong.

You all have read the Powers report that resulted. It is the product of an intense effort to get to the bottom of many questions surrounding the related party transactions. The other directors on the Special Committee—Dean Powers and Ray Trobe—and our legal and accounting advisors, essentially were strangers to Enron before the committee commenced its investigation. I want to thank them and commend them for undertaking the task and for their efforts and long hours.

My role in the committee was unique. As a Director of Enron during the period investigated, my performance, and that of my fellow directors, was part of what was being reviewed. For this reason, as the report states, I did not participate in that part of the report relating to its assessment of the Board. I think it is clear from the report that it was no whitewash on any front.

As a Board member, I am deeply disturbed by what the investigation revealed. The report makes clear that those in management on whom we relied to tell us the truth did not do so. Although I bear them no ill will, it appears that the outside experts at Arthur Andersen and Vinson & Elkins failed us and their professions as well.

We, too, have been criticized for approving these transactions and for failing in our duties to oversee these relationships. Those criticisms have hit us hard, because I firmly believed at the time, and believe today, that the Board made a reasonable business judgment to permit Mr. Fastow to serve in these partnerships for one reason and one reason only. Based on the information presented to us and on the advice of our outside auditors and lawyers, we believed those transactions would be in the best interest of Enron and its shareholders.

In the superheated environment surrounding the collapse of Enron, and in the face of the Powers report, I must, therefore, respectfully disagree with some aspects of the report relating to the Board's performance and corporate governance principles. What are these principles?

The reality in the modern corporation is that directors cannot, and are not expected to, manage a company on a day-to-day basis. Rather, to be a director is to direct. As directors, our role was to form general corporate policy and approve Enron management's strategic goals.

We were required to do so on an informed basis, in good faith, and in the honest belief that the actions we took were in the best interest of Enron. In reaching our decisions, we are entitled—and the Powers report concurs—to rely on the information we received from management and our outside experts, such as Arthur Andersen and Vinson & Elkins that we believed to be honest and reliable.

The report makes clear that the directors were acting in good faith when we approved these transactions. We had no personal interest in them, and we honestly believed that these transactions, though not without risk, were in the best interest of Enron shareholders. With the benefit of hindsight, the report criticizes our decision, but our business decision can only be evaluated based on the facts known to us at the time when we made it.

In this regard, I think the following points are important. First, as a Board, we were told by management and believed that this arrangement offered substantial benefits to the company and its shareholders in terms of supplying an entirely optional, quick, and efficient source of capital for Enron. We were told that our counsel and Arthur Andersen concurred in the judgment that the structures were appropriate.

We recognized the risk of having Mr. Fastow involved in a transaction with Enron and put in place supplemental controls to manage those risks. I will mention two of those today.

The Chief Risk Officer, Mr. Buy, and the Chief Accounting Officer, Mr. Causey, were to review each LJM transaction independently to ensure that they were fair to Enron and on arms length terms.

Second, Mr. Fastow remained a fiduciary to Enron under the code of conduct. He, therefore, was required at all times to put Enron's interest ahead of his own. The basic controls already in place at Enron remained as well. The transaction approval process required Board approval of all transactions in excess of $75 million. Had this control been followed, the Raptor III and Raptor recapital-

ization transactions, which the Powers report says were concealed from the Board, could never have occurred.

The code of conduct which prohibited related party transactions without the approval of the CEO remained in effect as well. Had this control been followed, neither the Chewco nor the Southhampton transactions, both of which also were concealed from the Board, could not have occurred. Neither of the transactions could have occurred.

Third, the regular credit risk reports we received in the Finance Committee should have informed us of the credit problems at Raptor. Mr. Buy knew this, but at no time that I can identify did any LJM transaction appear on our top 25 credit exposures list, even though the credit risk in these transactions, as we now learned, was massive and should have been disclosed.

Next, Arthur Andersen's responsibility to audit our financial statements, and the disclosure of related party matters, should have, but did not, reveal to the Board another fact that we did not know—that a number of investments were repeatedly being sold to and then repurchased from LJM.

Finally, Arthur Andersen's internal controls audit should have revealed all of these transactions to us, as they were all transactions to which existing or enhanced controls applied. I still do not understand why over a period of years Arthur Andersen did not tell either the Audit Committee or the Board that the controls we had put in place were not being followed.

The Powers report was an important first step in understanding what happened at Enron. We, as the Board, commissioned that report in an effort to get at the truth. As Board members, Dr. Jaedicke and I are here today to continue our dialog with you and the American people about what happened at Enron and how it can be prevented in the future.

I thank the committee for inviting us here today and look forward to a productive discussion of these important issues. Thank you.

[The prepared statement of Herbert S. Winokur, Jr. follows:]

PREPARED STATEMENT OF HERBERT S. WINOKUR, JR., CHAIRMAN, FINANCE COMMITTEE, BOARD OF DIRECTORS, ENRON

Chairman Greenwood, Congressman Deutsch, and Members of the Subcommittee. Good afternoon, and thank you for the opportunity to address the Subcommittee.

I am the Chairman of the Finance Committee of the Board of Directors of Enron. I have held this position for several years.

I. INTRODUCTION

On October 16, 2001, Enron announced that it was taking a $544 million after-tax charge against earnings related to transactions with LJM2, a partnership created and managed by Enron's CFO, Andrew Fastow. On the same day Ken Lay announced at an analysts' meeting that, in connection with the same transactions, it would take a $1.2 billion non-cash reduction to shareholder equity. Two weeks later, in order to learn how these losses had been incurred, the Board of Enron Corp. appointed a Special Investigative Committee. At that time, we committed to make public the results of that investigation. We did so on Saturday, when the Board authorized the release of a 217 page report detailing the Committee's investigations and findings.

I must tell you that I, as a member of the Special Investigative Committee and more generally as an independent member of the Board, have been deeply disturbed by what the investigation revealed. The Report makes clear that those in management on whom we relied to tell us the truth did not do so. The outside experts at

Arthur Andersen and at Vinson & Elkins failed us, and their professions, as well. We, too, have been criticized for approving these transactions and for failing in our duties to oversee these relationships. Those criticisms have hit us hard, because I firmly believed at the time—and believe today—that the Board made the business judgment to permit Mr. Fastow to serve in these partnerships for one reason and one reason only: Based upon the information presented to us, and upon the advice of our outside auditors and lawyers, we believed these transactions would be in the best interests of Enron and its shareholders. That this turned out to be untrue has been devastating to all of us.

I volunteered to serve on the Special Investigative Committee because I wanted to find answers to why this occurred. The Committee's Report was an important first step in that process, but it was only a step. This is our next step. Dr. Jaedicke and I are here today, voluntarily, to continue to share with the members of this Subcommittee what we now know about what happened at Enron.

We come here, of course, as independent members of a corporate board of directors. The reality in the modern corporation is that directors cannot, and are not expected to, manage a company on a day to day basis. Rather, to be a director is to direct. As directors, our role was to form general corporate policy and to approve Enron management's strategic goals. We were required to do so on an informed basis, in good faith and in the honest belief that the actions we took were in the best interest of Enron. We then delegated to the company management and its outside advisors the responsibility to carry out our directions. Importantly, an informed decision to delegate responsibility is as much an exercise of business judgment as any other.

The Report makes clear that the directors were acting in good faith when they approved these transactions. It also recognizes that we as a Board held an honest belief that these transactions—although not without risk—were in the best interests of Enron's shareholders. The Report acknowledges that this was our independent business judgment, formed in consultation with outside experts from Arthur Andersen and Vinson Elkins, on which we were and are—entitled to rely. With the benefit of hindsight, my colleagues on the Special Committee, without my participation, disagree with some of the decisions made by the Board, but they offer no suggestion that the Board did not act honestly and in good faith in approving these structures.

The Report questions whether we acted on an informed basis and suggests that we failed properly to oversee these transactions after they had been approved. I respectfully disagree. It is unfair to suggest we were uninformed simply because it has now become apparent that we were deceived. Our business decision can only be evaluated based upon the facts known to us at the time we made it. I am prepared today to answer questions both about the decisions we made, the controls we put in place, and the information we received, so that you and the public will understand that we sought to fulfill our duty while using what was our best business judgment.

A number of senior Enron employees, we now know, did not tell us—the full truth. Our accountants at Arthur Andersen, and our lawyers at Vinson & Elkins, we now know, did not provide good advice to us. The related party arrangements were terribly abused. I feel, however, that the tragedy of Enron's bankruptcy might well have been avoided if the controls we put in place had been followed as we intended, and if the important transactions about which we were not informed had not occurred. But I assure you that my colleagues and I, at the time, did our best to understand the risks and benefits involved in permitting Mr. Fastow to become the general partner of the LJM partnerships.

With that in mind, I would like to turn to a general discussion of three areas. The first is to describe how the Enron Board of Directors went about discharging its obligations to act in the company's best interests. The second summarizes the controls we had put in place—both generally and specifically with regard to these transactions—to contain and measure accurately the risks and rewards of Enron's business activity. Finally, I would like to discuss the specific circumstances in which we approved the LJM structures and—of equal importance—will share with you the important facts that were concealed from us at the time.

II. DISCUSSION

A. Enron's Management Direction

Enron's Board of Directors was composed of 12 independent directors and two inside directors, Kenneth Lay and Jeffrey Skilling. Many had advanced degrees. Others have significant government and regulatory experience. Still others are the heads of major corporate and non-profit organizations. My colleagues on the Board are highly accomplished in their fields, are highly intelligent, and, I believe, highly

ethical as well. As a Board, we worked well as a unit to help move Enron forward into a new business environment characterized by increased globalization of investment, rapid regulatory and technological change, and increased sophistication in the capital markets.

To some extent, as now has been learned, by early 2001 Enron's reach had exceeded its grasp. Business decisions that made sense at the time, such as the building of an extensive broadband network, or Enron's entry into developing markets abroad, did not work out. Other broadband companies, such as Level 3 and Qwest, have experienced severe declines in the price of their stock as the demand for bandwidth dried up. Global Crossing, another broadband company, is—like Enron—in bankruptcy. Our initiatives in power and water deregulation abroad were also less productive than we believed they would be. But companies such as AES also have seen significant declines in their stock prices. At the time, however, Enron's expansions were hailed in the media as brilliant initiatives. Over the decade of the 1990's, Enron became the dominant company in providing electricity and gas to customers around the world.

I raise this to make an important point. Enron, as a company, took a number of business and financial risks. These risks were disclosed in our Form 10-Ks. They were also recognized by the analysts and rating agencies who followed the company. To suggest otherwise is to ignore the disclosed, and well-publicized facts about Enron and its business strategy.

B. Enron's Internal Controls

Although the Company took risks, it also took careful steps to monitor and contain those risks. Enron had a significant risk management function called "Risk Assessment Control." Under the leadership of Rick Buy, this department employed over 100 people whose responsibility it was to measure the risks of Enron's trading operations, to assess the valuation of its assets and approve the valuation of contracts and assets, and to assess the credit-worthiness of Enron's trading counterparties—including the LJM entities.

The Finance Committee met regularly five times per year for 1½-2—hours typically the afternoon before each regular Board meeting. Our formal responsibilities were to recommend to the Board Enron's financial policies and to monitor its financial affairs. In that capacity, we received regular reports concerning proposed transactions, various credit ratios, Enron's value at risk modeling—which was an assessment of the unrealized risks of its trading operation—its liquidity, measures of borrowing cost and risk from capital markets, and its balance sheet. The Board's efforts to monitor Enron's risk activities were highly successful.

We also were available to management, when asked, to review possible pending transactions. On several occasions, management informally proposed and later withdrew large investment opportunities from consideration when committee members expressed their disapproval.

Of equal importance, our attention to risk control and the questions asked at presentations to the Board enabled us to identify and ask management to remedy problems within the risk management activities of an Enron retail power subsidiary, EES. As has been discussed in the press, the Board acted to remedy these problems when they were detected. Enron consolidated the risk management functions of the retail unit into that of the larger wholesale division—and disclosed the resulting restatement of results in the Form 10Q for the first Quarter of January 2001.

In addition to the Risk Assessment Control procedures, the Board implemented transaction approval controls. These included both general controls and additional controls specific to the LJM transactions.

Enron's general transaction approval process incorporated written presentations and various levels of required executive approvals. The written presentation was in the form of a Deal Approval Sheet, called a DASH. The DASH set out, in detail, the economic basis of significant transactions by Enron. It required the business unit to set out the merits and risks of any proposed investment, to explain its strategic purpose for Enron, to discuss its funding sources and to set out its projected returns. Depending upon the size of a given transaction, approvals at various levels were required. In the time frame at issue for the LJM transactions, new business in an amount greater than $25 million required Board approval. Below that level, at various breakpoints, approvals were required from the CEO or the business unit heads. Investments of between $25 million and $75 million required the approval of the Office of the Chairman. Investments in existing businesses above a $75 million threshold required the approval of Enron's Board.

C. Special Controls for the LJM Partnerships

Even before the LJM matters were brought to the Board, Enron maintained a code of conduct for its employees, which required annual certification as to their compliance.

In addition to the regular deal approval process and the code of conduct, we imposed specific controls related to the LJM transactions. These controls were extensive and robust. They included a requirement that both the Chief Accounting Officer, Rick Causey, and the Chief Risk Officer, Rick Buy, review and approve the merits of each transaction to be sure the terms were fair to Enron, were negotiated at arms' length, and that the accounting treatment was correct. Under the Code of Conduct, and under the procedures we implemented, each transaction also required a separate approval from the CEO or his delegate before it could proceed. That approval should not have been given to any transaction that was not absolutely fair to Enron and in its best interest. Approval was also required from internal and external legal counsel and from our external auditors, Arthur Andersen. Specific additional disclosure requirements as mandated by the SEC were subject to Andersen's and Vinson & Elkins' review, as well.

An additional structural control we imposed was that transactions with LJM were entirely optional. The business unit heads—whose compensation and incentives were outside Mr. Fastow's control—had every incentive to maximize the value they received in any sale of their assets. Unless they truly believed that a transaction was in the best interest of the company, there was no reason for them to do business with LJM, because it would directly, and adversely, affect their compensation if they failed to maximize Enron's value.

We also required the Office of the Chair to remain in control of Mr. Fastow's participation. This was important because Mr. Fastow explicitly acknowledged that he remained a fiduciary to Enron. In order to ensure that this duty was honored, Messrs. Skilling and Lay were given the authority to require Mr. Fastow to resign at any time from his involvement with LJM. Mr. Skilling also was charged with the responsibility to supervise Mr. Fastow's involvement, to make sure it did not become a disruption to the company and to ensure that his compensation from the LJM transactions was moderate. Mr. Skilling reported to us that he was discharging these obligations; it now appears that he did not do so.

There is no doubt that senior management, our outside accountants, and lawyers who were involved in these transactions understood these requirements. In fact, Enron created an additional and special LJM Deal Approval sheet specifically to verify that each and every LJM transaction complied with the internal controls that the Board had imposed. These requirements, like the regular transaction approval requirements, applied at all times to the LJM transactions, and the responsible people at the Company and Arthur Andersen knew this. We were repeatedly assured by both management and Andersen and Vinson & Elkins that these internal controls were being followed, that the transactions were indeed at arms' length and fair to Enron and that the company was realizing real and legitimate economic benefit from these transactions.

I describe the Risk Management system in detail because it was an important part of how the Board and the Finance Committees evaluated the risks associated with the LJM partnerships. That will become apparent, as I will now turn to the specific LJM transactions that were the subject of the Special Committee's report.

D. Transactions Discussed in the Special Committee Report

1. The Rhythms Net Connection Transaction

Enron had within its portfolio certain highly volatile investments, such as Rhythms NetConnection. Enron, as has been discussed, was required to use mark to market accounting on its "merchant" investments. That combination of volatile investments and mark to market accounting created instability and unpredictability in the Company's income statement. Putting in place hedges to mitigate and stabilize those risks was an important and sound thing to do. I don't think anyone can seriously question that Enron should have taken steps to hedge its risks. Indeed, just this week, I learned that the directors of Ford were sued by a class of shareholders because they failed to put in place hedges on significant and volatile investments in metals Ford used in catalytic converters.

The Special Committee was highly critical of Enron's decision to use forward contracts on its own stock in its hedging activities. I make the following observations.

First, the Report recognizes that at the time these transactions were authorized, Enron had significant unrealized value in forward contracts previously issued on its own stock. These forward contracts were written by Enron in order to hedge the expense of Enron's stock-based incentive compensation plan. In simple terms, Enron

wrote forwards at today's prices in order to protect itself against the risk that its stock would appreciate in value and thus make its incentive compensation plan more expensive. The Report does not criticize this decision. I believe that this is a common business practice.

The Report also notes that these forward hedges had been very successful. As a result of the appreciation of Enron's stock price, Enron was now able to purchase Enron stock at a substantial discount to the then existing market price. In fact, the value in these forwards—called the UBS forwards in the presentations made to us—was in the hundreds of millions of dollars. That value was an asset to Enron's shareholders. We were told, both by the company's management and by its accountants, that the most effective way to capture this value was to use this asset to support hedging transactions with a third party.

The Report contends, based on advice from the Special Committee's accounting consultants, Deloitte & Touche, that Enron's decision to use the forward contracts to hedge other risks was improper. It is not specific as to why this is so. It does not specify which accounting rules, in particular, were allegedly violated by this practice. Nor did the Special Committee know whether Deloitte as a firm agreed with its consultants' conclusions. In my view, it is more important to bear in mind what the Board actually knew when it made this decision.

What I knew was this. As a director, I was told that the Company had assets—in the form of forward contracts—that had appreciated significantly in value. I believed it made sense to try to find a way to use that value most effectively for the benefit of the shareholders. I, like the others on the Board, turned to Arthur Andersen for advice concerning whether the transactions being proposed made sense from an accounting perspective. As has been said by Andersen officials in testimony, Arthur Andersen was "very much involved in giving [its] advice as to whether these structures passed the accounting rules." The Report is even more explicit: "There is abundant evidence that Andersen in fact offered Enron advice at every step, from inception through restructuring and ultimately to terminating the Raptors. Enron followed that advice."

As Board members, we fulfill our duty to the shareholders when we act "through one of [our] Committees or through the use of outside Consultants." We relied on Arthur Andersen to assure us that these transactions were appropriate and permissible. They assured us they were. The Rhythms Net hedge also was the subject of a separate fairness opinion by PriceWaterhouse Coopers. The Rhythms Net transaction with LJM, as with all of the hedging transactions that were disclosed to us, were heavily scrutinized by our inside and outside counsel. As a result, until these transactions were restated, we had no reason to believe these transactions were in any way improper or impermissible.

Let me be absolutely clear. I knew that Rhythms Net, and later the Raptor transactions, involved the use of forwards on Enron stock. That fact was also disclosed in Enron's public filings. This matter is set out in Enron's regulatory filings, in disclosures that Arthur Andersen and Vinson & Elkins assured us were both sufficient and proper. What I did not then know is what the accounting consultants to the Special Committee now have said, namely that in their opinion this wasn't permitted under the accounting rules.

Media accounts of the Special Committee report seemed to imply that the Board of Directors knew that the LJM transactions, in particular the Raptor hedges, were undertaken for the purpose of creating fictitious earnings. I could not disagree more.

The transactions that were presented to us—and many were not—were presented as valid economic hedges of Enron's risks, using the gains in the Enron stock forward positions. I want to make clear that I never understood, and was not told, that the business purpose of entering into the LJM transactions was to create fictitious earnings. Quite the contrary, I was told that the LJM transactions were being undertaken to hedge the risks and volatility of our assets, and to assist Enron in obtaining additional third-party debt and equity capital on favorable terms to Enron shareholders to support the company's growth.

The Report concludes otherwise, based in part on an unverified handwritten note by the corporate secretary, to the effect that a particular Raptor transaction "does not transfer economic risk but transfers P & L volatility." From that single reference, which is inconsistent with the very document on which it is written, the Report generalizes that the Board knew these hedges did not really shift risk. That note is inconsistent with my recollection of the events at that meeting, and with the minutes of the meeting, prepared by the same secretary, that were approved and ratified by the committee as a whole.

Of equal importance, I am aware of specific representations to the Board that controvert the contention that the Board understood these hedges weren't real hedges. First, in an Audit Committee meeting—in the presence of Arthur Andersen—the

Audit Committee was advised that the LJM transactions were not earnings related but were, instead, primarily related to deconsolidations, securitizations or monetizations of assets. Arthur Andersen did not disagree with this statement. Second, as I indicated earlier, every presentation of the LJM and Raptor transactions described them as financial hedges for Enron's risks. If the hedges were imperfect, or if they were impermissible under the accounting rules, no one made the Board aware of that fact.

Finally, I want to emphasize that the particular transactions cited by the Committee, including myself, as evidence of earnings improprieties were transactions that either were not disclosed to the Board or that were, in fact, affirmatively misrepresented to us. I list a few of them here to illustrate the point.

2. Transactions Not Disclosed to the Board

a. Raptor III/New Power—The Report notes that a vehicle called Raptor III was created by Enron management, purportedly to hedge an investment in New Power stock. The Report makes clear that this transaction was never disclosed to the Board by anyone in management, although it was reviewed by Andersen.

I cannot and will not defend this transaction. It seems obvious to me that one cannot hedge an investment in New Power with warrants on the same New Power stock. It is equally obvious to me that the terms of this transaction, which seem to me to fail to properly value the New Power stock being contributed, were grossly unfair to Enron. We did not know that at the time, and neither company management nor Arthur Andersen—which was involved in valuing this transaction—told us the truth about it.

This particular transaction would and should have been avoided by simple adherence to the controls we put into effect. The Board of Directors required Messrs. Causey, Buy and Skilling to determine that each of the LJM transactions were fair to Enron. Of equal significance, given the size of the transaction, this transaction plainly required Board approval before it could be authorized. For reasons I do not understand, these approval requirements were ignored in this instance.

These approval requirements were known to Arthur Andersen. It was a critical part of the internal controls that they implemented at our direction, and that they were required to audit as Enron's internal and external auditors. That Andersen attended any number of subsequent Board and committee meetings, yet failed to raise this control failure, among others, with us, simply is astonishing.

b. Raptor Recapitalization—The credit problems with the Raptor entities which began in late 2000 were not disclosed to the Board. The decision in early 2001 to recapitalize the Raptor structure with an $800 million forward contract on Enron stock was, likewise, concealed from us.

Given its magnitude, and the critical issues it raised, this transaction is one that absolutely required Board approval. The existing risk management mechanisms also should have, but did not, reveal this to the Board. At each Finance Committee meeting, Mr. Buy presented to the Finance Committee a list of the Top 25 credit exposures for Enron. In February of 2001, when the Raptors were allegedly $350 million underwater, neither Raptor nor LJM appeared on the list that Mr. Buy presented to the Finance Committee, nor did he, Mr. Fastow, or Mr. Skilling, all of whom were in attendance at that meeting, raise this mat

As has been disclosed in the press, on February 5, 2001, Arthur Andersen held an internal meeting in which it expressed significant concern about the credit capacity of the Raptor vehicles and the quality of the earnings being attributed to them. Just one week later, however, with full knowledge of the Raptor credit problems, Arthur Andersen assured the Audit Committee that Enron would receive a clean audit opinion on its financials. Andersen also told the Audit Committee that there were no material weaknesses in Enron's internal controls—even though one week earlier its auditors had discussed, but not shared with the Board, the fact that the controls imposed by the Board for these related party transactions were *not* being followed.

Had the Raptor restructure been presented to the Board, the Board might well have chosen the alternative—to shut down the Raptors—would have by definition avoided the accounting error related to issuance of new equity which accounted for the bulk of the $1.2 billion reduction in shareholders' equity we took in October. I find this to be particularly tragic.

Andersen's failure to disclose its concerns to the Board, as with management's marked disregard for the required internal controls and lack of candor with respect to information owed to us, deprived the Board—us—of the ability to deal proactively with this problem. We cannot, I submit, be criticized for failing to address or remedy problems that were concealed from us.

c. Churned Transactions—The Report notes that there was an observable pattern of assets being sold to LJM in one quarter, with earnings being booked, only to be repurchased by Enron in the following quarter. This, too, was concealed from the Board. As best as I can tell, the lists of transactions presented to the Board for their review did not include these "churned" transactions. Of equal importance, I cannot fathom why Messrs. Causey, Buy and Skilling would have authorized such activity to begin with—much less why they would have failed to call it to our attention. Arthur Andersen and our lawyers may have been aware, as well, of these transactions because they either audited or documented them for Enron. They said nothing to the Board either.

Certainly neither I, nor any other outside director, would have permitted this to occur had we been aware of it.

B. The Board was Not Informed of Critical Information

The Report makes clear that important facts about many of these transactions were concealed from, or affirmatively misrepresented to, the Board of Directors. I attribute this to a failure not of controls, but of character. Everyone involved in these transactions—including Arthur Andersen, Vinson & Elkins, Andrew Fastow, Jeff Skilling, Rick Buy, Rick Causey and our internal legal counsel—knew that the Board had imposed extensive procedures to ensure that a critical overarching requirement would be met: Before any transaction could be approved, it had to be demonstrated that the transaction was on terms that were fair to Enron and negotiated at arms' length. Had that single control—much less all of the other controls we had imposed—been adhered to, none of these unfair transactions could have been approved.

As the Committee Report indicates, Andersen, in connection with the 10Q and 10K reports, and Vinson & Elkins, in connection with the Proxy, were required to ensure that our disclosures were truthful, complete and met the SEC requirements in dealing with related parties. As the Report indicates, there is much evidence that they did not fulfill their responsibilities.

Thus, while the Report contends that our controls were inadequate, it is more accurate to say they were ignored by those responsible to implement them. A few examples will suffice to illustrate the point.

1. Chewco

There is no suggestion in the Report that any Board member knew that Chewco was, in fact, an affiliated transaction.

Plainly, however, this fact was known to Vinson & Elkins. They drafted the transaction documents that created Michael Kopper's interest in this transaction. That interest, it is undisputed, was a violation of Enron's Code of Conduct. It was never presented to or authorized by the Board.

Andrew Fastow and Michael Kopper both knew this violated the Code. It appears that this was known to other Enron employees within the legal department as well.

2. Rhythms

The decision to unwind the Rhythms transaction was not disclosed to the Board. Our requirement that all related party transactions be reported to the Audit Committee therefore was violated.

This, too, is a transaction that was grossly unfair on its face—but, as the Special Committee report states, we simply didn't know about it. I am horrified that Mr. Fastow and other employees of Enron apparently have profited, secretly, at Enron's expense as a result of this transaction. I am particularly unhappy that Enron employees were permitted to participate in what clearly seems to be a corporate opportunity.

Importantly, however, this transaction could not have occurred had our Code of Conduct been followed in two important respects. First, the Code of Conduct's requirement that transactions be on terms fair to Enron remained in effect as to all LJM transactions. That was emphasized, repeatedly, by the Board and was incorporated expressly into the LJM approval processes. Under no circumstances should a transaction this unfair ever have been authorized.

Second, we never authorized any other employee to participate in any self-dealing transaction. Thus, Messrs. Kopper, Fastow, Glisan and others all consciously and deliberately violated the Code of Conduct in connection with these events. Mr. Causey, who knew the terms of the unwind, also failed in his obligation to report to us both the existence—and the unfair terms—of this transaction. Mr. Skilling, who was required to monitor the LJM transactions apparently failed, as well, in this obligation.

3. Raptor I

The Report makes clear that this transaction was materially and deliberately misrepresented to the Board. Throughout the Board minutes and in the presentation materials, the Board was assured that the projected return for this transaction was 30%. In fact, as is evident from Deal Approval sheets signed by Ben Glisan, and Scott Sefton, management of the company knew that LJM's projected return was, in fact, a minimum of 76%. Mr. Fastow also must have known these facts, because they were presented to the partners of LJM2 at their annual meeting. Both Mr. Glisan and Mr. Fastow attended the Board meeting where Raptor was presented. Neither of them told us the true rate of return they had projected.

4. Rhythms Restatement

It is also important, I believe, to point out that the restatement of $100 million in earnings from the Rhythms transaction is not the result of a hedge that "didn't work.'" There has never been any question that—as PriceWaterhouse Coopers assured us—the transaction was authorized on arms' length terms that were fair to Enron. To the contrary, as Arthur Andersen has acknowledged, this transaction had to be restated solely because of an accounting error. None of us could have anticipated that Arthur Andersen, which was heavily involved in structuring this transaction, would make a technical error on a matter of this importance. We relied on them to ensure that this transaction was both permissible under the accounting rules and to be sure that it was structured properly, in compliance with those rules. That they failed in that obligation is a great disappointment to all of us.

III. CONCLUSION

All transactions with LJM were required to be on terms that were fair to Enron and negotiated at arms' length. Had that requirement been adhered to, none of the unfair transactions criticized in the report could—or should—have occurred.

What happened at Enron has been described as a systemic failure. As it pertains to the Board, I see it instead as a cautionary reminder of the limits of a Director's role. We served as directors of what was then the 7th largest corporation in America. This was a part-time job. It was necessarily limited by the nature of Enron's enterprise—which was worldwide in scope, employed more than 20,000 people, and engaged in a vast array of trading and development activities. By force of necessity, we could not know personally all of the employees. As we now know, key employees whom we thought we knew proved to disappoint us significantly. Although I am not a lawyer, I have found the following paraphrase to be an accurate description of both the scope—and the limitations—of a corporate director's role:

The very magnitude of the enterprise requires directors to confine their control to the broad policy decisions. That we did this is clear from the record. At the meetings of the Board and its committees, in which all of us participated, these questions were considered and decided on the basis of summaries, reports of management and corporate records. These we were entitled to rely upon. Directors are also, entitled to rely on the honesty and integrity of their subordinates and advisers until something occurs to put them on suspicion that something is wrong.

We did all of this, and more. Despite all that we tried to do, in the face of all the assurances we received, we had no cause for suspicion until it was too late.

Mr. GREENWOOD. Thank you, Mr. Winokur. We certainly appreciate all of your testimony today.

The Chair recognizes himself for 5 minutes for purposes of inquiry, and let me start with you, Mr. Skilling. During your voluntary interview with our committee staff, and then today in your opening statement, you repeatedly have stated that you believe that the related transactions in question were beneficial to Enron and not sham transactions.

However, the Special Committee's report and additional documents make clear that these transactions were not true hedges. According to the minutes of the May 1, 2000, Finance Committee, Ben Glisan presented Raptor I and described it as "a risk management program to enable the company to hedge the profit and loss volatility of the company's investments." And if you'd like to refer to that document, it's Tab 4 in your notebook.

While not mentioned in the minutes, the Finance Committee was also given information suggesting that the Raptor vehicle was not a true hedge. Notes on the three-page written presentation materials titled ''Project Raptor: Hedging Program for Enron Assets''—apparently taken by Enron's corporate secretary. According to the Special Committee's report—that is on page 106—states, ''Does not transfer economic risk, but transfers P&L—profit and loss—volatility.''

Was this the primary goal and benefit of these transactions, Mr. Skilling?

Mr. SKILLING. It was my understanding, and I believe it was the understanding of the Board, that the transaction, the purpose of the transaction, was to provide a real hedge of certain high technology investments that had been extremely attractive for Enron over the last year and a half.

Compensation was provided, and in return derivatives were written that should have protected that position. That was my understanding of the nature of the transaction.

Mr. GREENWOOD. How would you explain, then, the corporate secretary at that Board meeting handwriting in, ''Does not transfer economic risk, but transfers profit and loss volatility''?

Mr. SKILLING. I think you would probably have to ask——

Mr. GREENWOOD. You were there, I believe.

Mr. SKILLING. Well, there is an issue as to whether I was actually—the particular meeting that you're talking about was in Florida, Palm Beach, Florida. And on the day of the meeting the power had gone out at 3 in the morning, and we were scrambling to get it fixed. Never mind. I was incorrect. I take it back.

Mr. GREENWOOD. So were you at this meeting, in fact, this Board meeting?

Mr. SKILLING. I don't know. I don't recall, but I—I don't recall.

Mr. GREENWOOD. Okay. You have not checked records that you might have as to your whereabouts?

Mr. SKILLING. Well, I would have been in at least a portion of the meeting. Was I there for the entire meeting? I just don't recall.

Mr. GREENWOOD. All right. Here is what we have. This is minutes of that meeting, May 1. Committee members present: Ronnie Chan, Jerome Myers, a whole long list. And it lists you as being there, as well as Mr. Buy, Mr. Causey, Mr. Fastow, Mr. Glisan, etcetera. So you were there. The meeting was supposed to begin at 4. It actually began at 4 minutes after 10 on May 1. So you're not disputing that you were at this meeting.

Mr. SKILLING. I just don't recall, Mr. Chairman.

Mr. GREENWOOD. Can you imagine why the minutes would include you as being present at the meeting if you weren't there?

Mr. SKILLING. Well, if I stepped out of the meeting for some period of time. I just don't recall.

Mr. GREENWOOD. Okay. So you don't recall—it is your testimony under oath today that you do not recall any discussion at that Board meeting that would have led you or anyone else to believe that, in fact, this did not transfer economic risk, but transfers profit and loss volatility? Is that——

Mr. SKILLING. I do not recall any discussion at that meeting that would have suggested that there was no economic risk transfer from the transaction.

Mr. GREENWOOD. Okay. In retrospect, do you believe it was a true hedge?

Mr. SKILLING. There is nothing I have seen that would suggest anything different to date.

Mr. GREENWOOD. Let me go to this question, Mr. Skilling. The Special Committee's report is most critical of the lack of oversight by management of the transactions. It states that management had the "primary responsibility for implementing the Board's controls." However, the Special Committee finds that no one was minding the store. Further, that the "most fundamental management control flaw was the lack of separation between LJM and Enron personnel and the failure to recognize that the inherent conflict was persistent and unmanageable."

"Fastow, as CFO, was in a position to exert great pressure and influence, directly or indirectly, on Enron personnel who were negotiating with LJM. Enron employees worked for LJM while still in their Enron offices, side by side with people who were acting on behalf of Enron." That is a closed quote from the report.

These are pretty strong statements against the management of Enron, of which you were one, Mr. Skilling. How do you refute these allegations, or do you?

Mr. SKILLING. To the best of my knowledge, the procedures that were enacted by the Board should have been effective at managing the conflict of interest that was involved.

Mr. GREENWOOD. During the committee staff interview with you in December 2001, just 4 months after you left Enron, August 14, 2001, you said that, "The company was in the best shape it ever was."

I would like for you to explain that statement in light of the fact that Enron has, subsequent to your departure, declared bankruptcy, fired its auditor, discovered massive insider dealing by its CFO and other employees, fired its CFO, treasurer, and one of its general counsels, seen Ken Lay's resignation as President and CEO and as Director, laid off over 4,500 employees, and has since reneged on its promise to pay them a severance, is under investigation by both Houses of Congress, the Department of Justice, and the SEC, had to restate its earnings from 1997 to 2000 in the amount of $586 million, and had to announce an equity writedown of $1.2 billion, not to mention likely additional earnings adjustments in excess of a billion dollars that indicates that Enron was not even profitable while you were at the helm as CEO.

Enron's condition today seems nothing like being in good shape. How do you explain this?

Mr. SKILLING. All I can say is on August 14, the date that I left the company, I believed that the company's financial statements were an accurate reflection of its financial condition. Beyond that, there were a number of areas that we had made significant progress in the last 6 months. As you remember, there was a terrible issue related to the California energy crisis. By that point, prices had dropped. It looked as if the California energy problem had been contained and resolved.

Second of all, the broadband business. As we all know, in the first quarter of 2001, the stock and equity prices for broadband companies were under enormous pressure. We had restructured that business, two separate restructuring activities, the first in late March of 2001, the second in late June of 2001, and we believed that we had significantly reduced any exposure, further exposure from the broadband business to the rest of Enron's activities.

And third, and probably most important in my mind, we had completed the best quarter we had ever had, the second quarter of 2001, in our wholesale merchant business. The growth rates had remained at levels that, quite frankly, were extremely high, and the profitability from the business was extremely good. So on August 14, again, I believe the financial statements were an accurate reflection of the state of the company, and I believed that we had made progress on a number of different dimensions that put the company in a good position for the future.

Mr. GREENWOOD. Mr. Skilling, a massive earthquake struck Enron right after your departure. And people in far inferior positions to you could see cracks in the walls, feel the tremors, feel the windows rattling, and you want us to believe that you sat there in your office and had no clue that this place was about to collapse.

Mr. SKILLING. On the day I left, on August 14, 2001, I believed the company was in strong financial condition.

Mr. GREENWOOD. My time has expired. The Chair recognizes the gentleman from Michigan, Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman.

Mr. Skilling, The New York Times this morning described you as, and I am going to quote, "the ultimate control freak, a sort of hands-on corporate leader, who kept his fingers in all pieces of the puzzle." And The Times isn't the first publication to describe you this way. Do you really want us to believe and the American people to believe that a control freak was ignoring the very transactions that were providing 70 percent of the company's revenues in 2001?

Mr. SKILLING. First, with all due respect, the 70 percent, I don't know where that comes from, and we would have to spend some time discussing that. But in terms of the assertion by The New York Times that I was a control freak, I think probably a more accurate description would be that I was a controls freak. We had a company that was an enormous organization that was far flung across the globe.

We had to put in place the ability for our managers across the world to make decisions on a timely basis. To do that, we put in force what I believe was a very effective control structure for the company. And if you would like I could go into some of the elements of that control structure.

Mr. STUPAK. No, because the earlier panel—one of the witnesses there described you as being intense hands-on, not a control freak but an intense hands-on, that you really knew every part of this operation. From 1997, you were Chief Operating Officer until you became the CEO. So you are either one or two in the company for the last 4 years. And from what I have heard from your testimony today, you don't know what went on. Everything was fine when you left.

Mr. SKILLING. Congressman, Enron Corporation was an enormous corporation. Could I have known everything going on everywhere in the company? I had to rely on the best people. We hired the best people. We had excellent, excellent outside accountants and law firms that worked with us to ensure——

Mr. STUPAK. With all due respect, Mr. Skilling, you couldn't even answer the Chairman's question about a Board meeting. You know, the Board meetings, that was May 1 the one he asked you about. Every Board meeting, when you leave the room, anyone leaves the room, it is all marked in there—left the room for a short period of time. So the transaction that the Chairman was asking you about you certainly were there. You certainly were there.

Mr. SKILLING. Well, first of all——

Mr. STUPAK. But let me just ask you a couple of other questions, then.

Mr. SKILLING. Sure.

Mr. STUPAK. You were COO when LJM1 was initiated, were you not?

Mr. SKILLING. Yes.

Mr. STUPAK. And you were also the COO when LJM2 was created, were you not?

Mr. SKILLING. Yes, that is correct.

Mr. STUPAK. And you were also the COO when JEDI was created, were you not?

Mr. SKILLING. I was not. I believe at that time I was Chairman and Chief Executive Officer of Enron Capital and Trade, which was our wholesale merchant business.

Mr. STUPAK. Okay. Well, you were the COO, then, when Chewco was set up.

Mr. SKILLING. I don't believe so. I believe I was still Chairman and Chief Executive Officer.

Mr. STUPAK. Well, that was later in 1997. When in 1997 did you become COO?

Mr. SKILLING. It was January—I believe January 1997.

Mr. STUPAK. Okay.

Mr. SKILLING. I think that's correct.

Mr. STUPAK. Well, the side agreement between Chewco and JEDI was—I believe testimony earlier today was December 1997, so you would be COO then.

Mr. SKILLING. Then I would have been, yes.

Mr. STUPAK. Okay. Now, in looking at all of this, and in looking at your code of ethics, it says—it is on page 49, investments and outside business interests of officers and employees. And you asked from every person complete loyalty to the best interests of the company and a maximum application of skill, talent, education, to the discharge of the job responsibilities without any reservation whatsoever.

"Therefore, it follows that no full-time officer or employee should"—I will go to B—"make investments or perform services for his or her own related interests in any enterprise under any circumstances for the reason or nature of the business conducted by such enterprise. There is, or could be, a disparity or conflict of interest between the officer and the employee and the company." True statement, right, that code of ethics there?

Mr. SKILLING. I assume that is our code of ethics.

Mr. STUPAK. Okay. Then why did you then waive that code of ethics for Mr. Fastow, not once but twice, to create these companies, these SPEs?

Mr. SKILLING. You are asking a somewhat different question. You were asking about Chewco. Is it Chewco that you are interested in, or are you interested in——

Mr. STUPAK. No, no. No, I am asking about—you were there when all of these—you were the COO when all of these were created.

Mr. SKILLING. Yes.

Mr. STUPAK. Especially the side agreement, which is the real problem between Chewco and JEDI. So they sell an asset, the next day they sell it back, real roundabout way to make a lot of money here for some people.

Mr. SKILLING. Sir, I don't believe there were any transactions subsequent with Chewco. To my knowledge, there were no transactions with Enron subsequent to the Chewco purchase of JEDI.

Mr. STUPAK. There was a conflict on June 28, 1999. I am referring to the Board meetings. I believe it is number 7 in your book. And if you look on page 2 and page 3, page 3 in particular, "Resolved, therefore, the Board hereby adopts and ratifies the determination by the Office of the Chairman, pursuant to the company's conduct of business affairs, investments, and outside business interests of officers"—the thing I just read to you—"and, therefore, that participation of Andrew S. Fastow as the managing party, manager of the partnership, will not adversely affect the interests of this company."

You and the Board did it on June 28, 1999. You did it again for Mr. Fastow again on October 11 and 12, 1999. And on October 11, 1999, it is found on page 18 of your Board meetings. Is this part of your creative corporation that you——

Mr. SKILLING. Sir, I think we are going to need to go back. If we want to answer this accurately, we are going to need to go back specifically—at specific separate transactions. The Chewco transaction, there was no waiver.

Mr. STUPAK. Oh, wait a minute. Wait.

Mr. SKILLING. To my knowledge, there was no waiver of the code of conduct for the Chewco transaction. On LJM1, there was a waiver of the code of conduct that was based on a fairness opinion that we had from an accounting firm that the transaction was in the interest of Enron shareholders. On LJM2, we recognized that there was a potential creation of conflict of interest. To mitigate or eliminate that conflict of interest, we established some very tight controls to ensure that Enron's interests would be protected.

At no time did I enter into any transaction or was I personally involved in any transaction that I believed was not fully in the interest of Enron shareholders.

Mr. STUPAK. And the controls didn't work, and those controls were—that were there in your code of ethics, you waived them.

Mr. SKILLING. The code of ethics does not have a description of codes or specific procedures to be followed. The code of ethics is a code of ethics that was waived in lieu of establishing a range of

very sophisticated procedures to eliminate the conflict of interest so that Enron could benefit from the creation of these——

Mr. STUPAK. And they never did.

Mr. GREENWOOD. The time of the gentleman——

Mr. STUPAK. They never did benefit.

Mr. GREENWOOD. [continuing] from Michigan has expired.

The Chair recognizes the gentleman from Louisiana, Mr. Tauzin, for 5 minutes.

Chairman TAUZIN. Thank you, Mr. Chairman.

Mr. Winokur, in your testimony you say that the report makes it clear that those in management in whom you relied to tell us the truth did not do so. Was Mr. Skilling one of those people?

Mr. SKILLING. Sir, I missed it. Is that directed at——

Chairman TAUZIN. I have asked Mr. Winokur the question.

Mr. WINOKUR. I think it is for me.

Mr. SKILLING. That is what I thought. I just missed——

Mr. WINOKUR. Congressman, I believe the report says that we have conflicting information about the Raptor transaction.

Chairman TAUZIN. Please answer the question. You said that people in management did not tell you the truth. Was Mr. Skilling one of those people?

Mr. WINOKUR. I don't believe that Mr. Skilling ever lied to us. No, sir.

Chairman TAUZIN. Did he tell you the whole truth?

Mr. WINOKUR. I believe that management, including a large number of people, did not disclose items we were entitled to receive.

Chairman TAUZIN. Well, let us look at the secrets that were kept from the Board according to you, Mr. Jaedicke. One of the seven deadly secrets you mentioned in your testimony at page 10, and I will go through four of them. The first is that the Board didn't know that Mr. Kopper was involved in LJM. Is that correct, Mr. Jaedicke?

Mr. JAEDICKE. We did not know he was involved in LJM. That is correct.

Chairman TAUZIN. Right. Let us turn to you, Mr. Skilling. Did you know that Mr. Kopper was involved with LJM?

Mr. SKILLING. Yes, I did.

Chairman TAUZIN. Did you tell the Board?

Mr. SKILLING. I don't recall.

Chairman TAUZIN. Let us look at the second deadly secret. The Board was not informed and did not approve of any other Enron employees besides Mr. Fastow working for or having financial interest in LJM. Mr. Skilling, did you know that other employees besides Mr. Fastow had interest or investments in LJM deals?

Mr. SKILLING. I did not.

Chairman TAUZIN. You did not know that. Who knew that?

Mr. SKILLING. Certainly, whoever had the records for financial disbursements by LJM, which I assume would be the partnership records, would know.

Chairman TAUZIN. You didn't see the approval sheets that were sent to you by Mr. Mintz on these deals?

Mr. SKILLING. I am sorry. What——

Chairman TAUZIN. He sent them to you in May according to his testimony. He sent you approval sheets on all of these deals, and these deals outline who was negotiating for and against the corporation. And they indicated in one case that Kopper was negotiating for LJM, and Mr. Yaeger was negotiating for the corporation. You have seen all of these sheets?

Mr. SKILLING. Can you give me a specific reference, Mr. Chairman, that I can look at?

Chairman TAUZIN. It is Tab 26.

Mr. SKILLING. Tab 26.

Chairman TAUZIN. You were not aware that Messrs. Glisan, Morantz, Yaeger, and others had investments in deals that were being done by LJM?

Mr. SKILLING. I had no knowledge that Messrs. Glisan, Morantz, Yaeger, or Linn had interest in LJM.

Chairman TAUZIN. So Mr. Fastow never told you this?

Mr. SKILLING. He never told me that.

Chairman TAUZIN. And, therefore, you never communicated to the Board that other members of the corporation were engaged in investments in these corporations?

Mr. SKILLING. Mr. Chairman, I didn't know.

Chairman TAUZIN. But you had your hands in everything. But you didn't know this.

Mr. SKILLING. Have I said I had my hands in everything? I think——

Chairman TAUZIN. Well, people have said you did.

Mr. SKILLING. [continuing] my comment was that this is a very large corporation. We are a multinational corporation—operation spread around the world. It would be impossible——

Chairman TAUZIN. One of the seven deadly secrets apparently that was kept from you, according to you, Mr. Jaedicke, was the secret that the Board had sold—turned around and sold, rather, assets right before the financial reporting period only to buy five of them back immediately after the reporting period.

Mr. Skilling, were you aware of that fact?

Mr. SKILLING. I was not aware of that fact.

Chairman TAUZIN. You didn't know that the company was selling assets and repurchasing them after the financial reporting period?

Mr. SKILLING. There is only one asset that I was aware of that was sold and repurchased, and that was an interest in LJM1 in a project in Brazil, a power project in Brazil, that was called Queba.

Chairman TAUZIN. And, finally, fourth deadly secret. That the Board was not told that Enron agreed to protect LJM from losses on any of its transactions. Mr. Skilling, you deny knowing that at all?

Mr. SKILLING. I absolutely unequivocally deny that there was any arrangement, any agreement, period, that would have provided a riskless rate of return to anyone that we dealt with as Enron Corporation.

Chairman TAUZIN. Well, Mr. Jaedicke, you're telling me that that is true and that you were never told of it. Is that correct?

Mr. JAEDICKE. Well, sir, I was quoting the findings of the Special Committee here and saying we did not know—we did not have available to us that information.

Chairman TAUZIN. Let me quote you, then. On page 9 of your testimony you say that one of the 13 controls that you put in——

Mr. JAEDICKE. Right.

Chairman TAUZIN. [continuing] to make sure that there weren't any conflicts of interest, and that the special transactions would be reviewed correctly—look at number 4. It says, "Not only that Buy and Causey would approve all of these transactions, but that Jeff Skilling, President and Chief Operating Officer, and Mr. Fastow's superior, also was to review and approve any transactions." Is that correct?

Mr. JAEDICKE. That is correct, sir.

Chairman TAUZIN. Were you aware that Mr. Skilling was refusing to sign the approval forms?

Mr. JAEDICKE. No, sir, I was not.

Chairman TAUZIN. You were never told that he refused to sign the forms.

Mr. JAEDICKE. No, sir, I was not.

Chairman TAUZIN. You also have a control number 6, that once a year the Audit Committee, which I believe you chaired, is that correct?

Mr. JAEDICKE. Right, sir.

Chairman TAUZIN. Was to review the transactions that had been completed in the prior year. Did the Audit Committee do that?

Mr. JAEDICKE. Yes, they did, sir.

Chairman TAUZIN. Did you ever see these approval forms at all?

Mr. JAEDICKE. Not the approval forms.

Chairman TAUZIN. Let me read to you the bottom of the one I am referring to. It is the one that has to do with the Cortez—the deal name is Cortez. It is a deal negotiated by Michael Kopper for LJM and negotiated by Yaeger on behalf of the corporation. I am sorry, by Tustar Patel.

And in this deal the last statement is, "Has the Audit Committee of Enron Board of Directors reviewed all Enron LJM transactions within the past 12 months?" And the answer on the form is no. Is that correct?

Mr. JAEDICKE. Sir, I don't have the form.

Chairman TAUZIN. I am asking to look at that tab. I think it is number 26.

Mr. WINOKUR. Sir, it is the back part of the tab, the——

Chairman TAUZIN. It is multiple pages. But if you will look at page number 2 on the approval sheet, item number 3F, you will see the question. Has the Audit Committee of Enron Corporation Board of Directors reviewed all Enron LJM transactions within the past 12 months? And the answer checked off is no.

The next question, "Have all recommendations of the Audit Committee related to Enron LJM transactions been taken into account in this transaction?" And the box is marked no, with the further explanation that the Audit Committee has not reviewed any transactions to date. Is that accurate?

Now, everybody signed off on this. If you look at the next page, you will see where the business unit, business unit legal, Enron Corporation legal, Global Finance legal, Mr. Buy, Mr. Causey, all signed off on it as being accurate. The only person who apparently didn't sign it was Mr. Skilling. Was this accurate or not?

Mr. JAEDICKE. Our first review of the LJM transactions would have been—which we did once a year, would have been in February of 2000. And I am just—I don't know what the—the date is what is hanging me up here. I have not seen this information.

Chairman TAUZIN. Well, let me ask Mr. Skilling. Did you personally follow the control number 4, which required you to review and approve every single one of these transactions?

Mr. SKILLING. I think there are a number of points I would like to make, and I hope——

Chairman TAUZIN. Could you just answer that first? Did you, in fact, review and approve all of these transactions as required by control number 4?

Mr. SKILLING. Did I meet my responsibilities as Chief Operating Officer——

Chairman TAUZIN. Just answer that question. Did you review and approve all of the transactions as required by number 4 of the controls?

Mr. SKILLING. I was not required to approve those transactions.

Chairman TAUZIN. So you disagree with the control provision?

Mr. SKILLING. I take it as very——

Chairman TAUZIN. Mr. Jaedicke's testimony——

Mr. SKILLING. Sir, if you would go back to the October 1999 minutes of the Board of Directors meeting when the original control system was set up, it is absolutely explicit and absolutely clear that approval was to be made by Mr. Rick Buy and Mr. Causey, and it was going to be reviewed by the Audit Committee.

Chairman TAUZIN. So, Mr. Jaedicke, let me go to your testimony. Look on page 9. Mr. Jaedicke, you tell us here in writing that Jeff Skilling, President/Chief Operating Officer, and Mr. Fastow's superior, also was to review and approve any transactions. He is telling me that is wrong. Who is correct?

Mr. JAEDICKE. Mr. Chairman, in the Audit Committee meeting of—and the Finance Committee meeting, too, I think, of February 2001, the controls are enumerated. And I believe it says the controls that had been in place—these were covering the LJM transactions—required the approval of Mr. Skilling, Mr. Buy, and Mr. Causey.

Chairman TAUZIN. In fact, I am reading it right now. It is on page 2 of the minutes of October 6, and let me quote it. It says that he then discussed the mechanisms that had been put in place to mitigate any potential conflicts, including, one, his fiduciary responsibilities to the companies, to the Office of the Chairman of the Board, could ask him to resign from LJM at any time apparently.

Number 3, Messrs. Buy, Causey, and Skilling approved all transactions between the company and LJM funds. Mr. Skilling, do you deny the existence of these Board meetings?

Mr. SKILLING. Can you give me the specific reference, Mr. Chairman?

Chairman TAUZIN. The reference is on page 2 of the minutes of the meeting of the Finance Committee of the Board of Directors of Enron Corporation, October 6, 2000.

Mr. SKILLING. Which tab? Do you know which tab?

Chairman TAUZIN. It is Tab 18.

Mr. SKILLING. Tab 18.

Chairman TAUZIN. I am sorry, 8. Tab 8.

Mr. SKILLING. Tab 8. I would refer you back earlier into the paragraph on page 2 of those minutes. In that paragraph it says, "Mr. Fastow then discussed the company's private equity strategy." Mr. Fastow is the person that represented what controls had been in place inside the company to review LJM transactions. This is a verbatim report of what Mr. Fastow said to the Finance Committee——

Chairman TAUZIN. Let me read you the next sentence, Mr. Skilling. It says, "Messrs. Causey and Skilling then discussed the benefits of the company." You were at that meeting, weren't you?

Mr. SKILLING. Mr. Causey and Mr.——

Chairman TAUZIN. The lights weren't out. The power wasn't out. You were at the meeting. You heard Mr. Fastow say that you were going to approve each one of these transactions. Did you say, "I am not going to do that"?

Mr. SKILLING. I got a little confused. I mean, we are all under a tremendous amount of tension and a tremendous amount of pressure with what is going on here. And I will admit to being under a tremendous amount of pressure and an intense amount of——

Chairman TAUZIN. I grant you that, Mr. Skilling. I would just like a clear answer. Were you at that meeting?

Mr. SKILLING. This meeting was the meeting that occurred in Palm Beach, Florida. This is October 6, 2000. In that meeting, the power had gone out, and as everybody remembers we were in a room—the room was dark, quite frankly, and people were walking in and out of the meeting trying to——

Chairman TAUZIN. You never heard Mr. Fastow say that you would approve all of these transactions?

Mr. SKILLING. I don't recall.

Chairman TAUZIN. You just don't recall.

Mr. SKILLING. I do not recall.

Chairman TAUZIN. But you never ever said to the Board or the committee, "I am not going to do that. I am not going to approve these transactions"?

Mr. SKILLING. I wouldn't have to. In October 1999, when the process was established for approval of transactions with LJM, the process is absolutely crystal clear. It involved approval by Mr. Causey and Mr. Buy.

Chairman TAUZIN. Is that why you wouldn't sign these documents?

Mr. SKILLING. No, and I——

Chairman TAUZIN. Why didn't you sign them? Tell me that, please.

Mr. SKILLING. May I give you—you will give me time to answer?

Chairman TAUZIN. You have got it.

Mr. SKILLING. Okay.

Chairman TAUZIN. Please do.

Mr. SKILLING. Okay. Thank you, sir. First, I did not receive that memo. Second of all, I——

Chairman TAUZIN. Wait. Are you saying you did not receive Mr. Mintz's memo?

Mr. SKILLING. To my recollection, I did not receive that memo. Second, I would have had no problem signing that, and I believe

if you look at the specifics of the memo of Mr. Mintz's—in fact, do you have the reference for Mr. Mintz's memo in here? Do you have a copy of that memo?

Chairman TAUZIN. We have a copy of the memo. We also have his testimony right before you got here. It said he tried three times to ask you for a meeting to talk about the memo. Do you recall that?

Mr. SKILLING. I do not recall that. Would you mind if we turn to that memo?

Chairman TAUZIN. Sure.

Mr. SKILLING. Which——

Chairman TAUZIN. Tab 15.

Mr. SKILLING. Number 13?

Chairman TAUZIN. 13, I am sorry. Tab 13. It is 15, I am sorry.

Mr. SKILLING. 15. I draw your attention to a couple of points in this memo——

Chairman TAUZIN. Please do.

Mr. SKILLING. —Mr. Chairman. The first one is it says, "Accounting and RAC require the signatures of Rick Causey and Rick Buy. Such approval sheet also provides for your signature." In the next paragraph it says, "All required signoffs for the 2000 transactions have recently been completed." All signoffs have recently been completed.

And then further in that same paragraph it says, "In our discussions arranging for your signature, which, as it said, the form provides for my signature, "it says that we have—it was decided to provide you with all finalized approvals in aggregate rather than on a piecemeal fashion, and we are now ready to do so," which meant——

Chairman TAUZIN. In other words, everybody else had signed, they were ready to get your signature——

Mr. SKILLING. The transactions were done. The transactions had been completed.

Chairman TAUZIN. Of course. I am not arguing that. I am just asking you——

Mr. SKILLING. Transactions could not have been completed. Jordan Mintz is a lawyer for Enron Corporation. Those transactions could not have been completed if it was necessary for me to authorize those transactions. It couldn't have been done.

Chairman TAUZIN. I am not asking whether you authorized them. I am asking whether you signed the approval sheets, because there is an issue here, Mr. Skilling, whether or not under the controls set up by the Board, as they understood them, you were required to do so, to review and approve. And you are telling us, No. 1, you never got the Mintz memo; No. 2, you don't recall anybody asking you to set up a meeting to discuss signing these documents; and, No. 3, I am still asking you, why didn't you sign them at all?

Mr. SKILLING. They were not given to me.

Chairman TAUZIN. You never saw them?

Mr. SKILLING. I do not recall being presented with these documents. I do not recall being presented with these documents.

Chairman TAUZIN. I have exceeded my time. Thank you, Mr. Chairman.

Mr. GREENWOOD. The time of the gentleman has expired. The Chair recognizes the gentlelady from Colorado, Ms. DeGette.

Ms. DEGETTE. Thank you, Mr. Chairman.

Mr. Skilling, you knew certainly in 2000, and probably sooner, that these LJM transactions in particular—there were risks of a conflict of interest with Mr. Fastow, did you not?

Mr. JAEDICKE. Are you——

Ms. DEGETTE. Because Mr. Fastow——

Mr. JAEDICKE. [continuing] addressing that to Mr. Skilling, or to me?

Ms. DEGETTE. Mr. Skilling.

Mr. SKILLING. Are you asking if I knew that there was a conflict of interest associated with LJM?

Ms. DEGETTE. There was a potential conflict of interest.

Mr. SKILLING. Absolutely. That is why——

Ms. DEGETTE. Absolutely.

Mr. SKILLING. [continuing] we put the procedures in place to eliminate those conflicts.

Ms. DEGETTE. And that is why, as you said, you were a controls freak, to make sure the controls were in place, right?

Mr. SKILLING. We would not have entered into the LJM transaction——

Ms. DEGETTE. Yes or no.

Mr. SKILLING. [continuing] without an adequate control——

Ms. DEGETTE. You wanted control, right? Yes or no.

Mr. SKILLING. We would not have entered into the transactions if we had not had adequate controls to manage the conflict of interest.

Ms. DEGETTE. Okay. Now, you said that October 6, 2000, you don't recall being there for this discussion about—by Mr. Fastow about the LJM funds because the lights were out?

Mr. SKILLING. I do not recall.

Ms. DEGETTE. Okay. So you don't recall him talking about how his role in the LJM funds could potentially create a conflict of interest in that he negotiates for the LJM funds?

Mr. SKILLING. We were all——

Ms. DEGETTE. Did you know he negotiated for the LJM funds?

Mr. SKILLING. Actually, I believe Andy had represented to the Board—my recollection is Andy had represented to the Board that he would not be involved in direct negotiations of LJM transactions.

Ms. DEGETTE. So as the captain of this ship, which was Enron, you don't recall being at a meeting in Palm Springs, Florida, where Mr. Fastow said his role in the LJM funds could potentially create a conflict of interest in that he negotiates for the LJM funds?

Mr. SKILLING. There was no question in anyone's mind on the Board of Directors or in management that there was not a conflict of interest created. The objective was to create a process——

Ms. DEGETTE. No. But you don't recall him ever saying to you or anyone that he negotiated for the LJM funds?

Mr. SKILLING. Actually, it is my recollection that Andy had represented that he would not negotiate for the LJM funds.

Ms. DEGETTE. Okay. So did you, in your role, ever review the minutes of the Finance Committee?

Mr. SKILLING. I did not review them.

Ms. DEGETTE. You did not review the minutes.

Mr. SKILLING. No.

Ms. DEGETTE. So what you are saying is if someone wrote this in here—it is in Exhibit 8—that would be a lie?

Mr. SKILLING. No. If that was an accurate representation of what Andy described to the Finance Committee, that is what is in the Board minutes.

Ms. DEGETTE. And that was the meeting you don't recall if you were there.

Mr. SKILLING. I was in the meeting. I don't recall if I was there at the time Mr. Fastow specifically went through the steps for control.

Ms. DEGETTE. Do you recall an agreement that you would approve all transactions between the company and the LJM funds?

Mr. SKILLING. No, I do not recall that.

Ms. DEGETTE. Did you think you had to approve all transactions?

Mr. SKILLING. I did not. That was not my understanding.

Ms. DEGETTE. You did not think you had to approve the transactions between the company and the LJM funds?

Mr. SKILLING. No. We had——

Ms. DEGETTE. Okay.

Mr. SKILLING. [continuing] a process in place where Mr. Causey and Mr. Buy, who each had organizational units of several hundred people, probably in aggregate several thousand controls people—we had Arthur Andersen——

Ms. DEGETTE. Okay. Did you——

Mr. SKILLING. [continuing] reviewing the transactions, and we had Vinson & Elkins reviewing the transactions.

Ms. DEGETTE. Okay. Did you ever hear about a thing called a deal approval sheet, which was one of the controls that the Board put into place?

Mr. SKILLING. Absolutely. I am familiar with the deal approval process.

Ms. DEGETTE. And you knew those deal approval sheets were supposed to be signed off on by a variety of people when there was one of these transactions, correct?

Mr. SKILLING. That is incorrect. The deal approval process was the standard capital approval process. Any time Enron was disbursing cash, any time Enron was disbursing cash of a certain level of magnitude——

Ms. DEGETTE. Right.

Mr. SKILLING. [continuing] there had to be a dash generated.

Ms. DEGETTE. Right.

Mr. SKILLING. And that dash had different authority levels within the company.

Ms. DEGETTE. Right.

Mr. SKILLING. So there were some people——

Ms. DEGETTE. And some of the authorities required your approval, didn't they?

Mr. SKILLING. For capital——

Ms. DEGETTE. Some of the financial levels.

Mr. SKILLING. [continuing] expenditure—for a capital expenditure where cash was leaving Enron Corporation, there were dif-

ferent levels of authority within the company. Business unit managers had a level of authority. I, as Chief Operating Officer, had a level of authority. As CEO, I had a level of authority.

Ms. DEGETTE. Did you thin——

Mr. SKILLING. Mr. Sutton, as Vice Chairman, had a level of authority. Mr. Lay——

Ms. DEGETTE. Did you——

Mr. SKILLING. [continuing] as CEO had a level.

Ms. DEGETTE. Okay. I got you. Did you ever think that you had to sign the dash sheet for any of the LJM transactions?

Mr. SKILLING. Any LJM transaction that involved a cash disbursement that would have been within my signing authority either had to be signed by me or someone else higher in the hierarchical chain of the company.

Ms. DEGETTE. Do you recall ever seeing a dash sheet for any LJM transaction?

Mr. SKILLING. I don't recall.

Ms. DEGETTE. Do you recall ever signing one?

Mr. SKILLING. I don't recall.

Ms. DEGETTE. Do you recall ever seeing one and then not signing it?

Mr. SKILLING. There would never be a case on a dash where I would have been required to sign a dash, that if someone higher in the authority chain had not signed it that I would have to sign, because we wouldn't have disbursed cash.

Ms. DEGETTE. Okay. With respect to the LJM transactions, where is the written policy that says either you or someone superior to you has to sign these dash sheets?

Mr. SKILLING. The cash sheets are a totally separate issue from the LJM transactions. The LJM transactions—any transaction with LJM2 was governed, in addition by the—to the dash process——

Ms. DEGETTE. But there were special dash sheets for LJM, right?

Mr. SKILLING. Not initially. I think that there was a supplementary sheet that was developed later.

Ms. DEGETTE. Well——

Mr. SKILLING. From the original—the original approval of LJM2, which is where the transactions occurred, please go back to the Board of Directors meetings and the Finance Committee meetings of October 1999. The process is very clearly established in light of that.

Ms. DEGETTE. So you remember 1999; 2000 you're not so sure.

Mr. SKILLING. That was the time that the process was set up.

Ms. DEGETTE. And the lights were out and stuff like that. I understand.

Mr. SKILLING. That was in the year 2000, not in 1999.

Ms. DEGETTE. Now, please take a look at—right, the lights were out in 2000.

Mr. SKILLING. 2000, not in 1999.

Ms. DEGETTE. But everything was okay in 1999. I think that is kind of prophetic, Mr. Chairman.

Exhibit 13—I want you to just take a quick look at that. We talked about that before. The Chairman talked about this. It is a memo from Jordan Mintz to Rick Buy and Rick Causey about the LJM approval process transaction substantiation. And on page 2,

it says, ''The company subsequently adopted a written LJM approval sheet,'' and it says, ''Such approvals are to be reviewed and executed by certain members of Enron senior management, including Jeff Skilling.'' Do you see that? And it doesn't say, ''Jeff Skilling or someone else'' does it?

Mr. SKILLING. It says ''reviewed,'' and it says, for example, ''the checklist provides.'' In the memo that Jordan wrote, which was clearly not contemporaneous with approval of LJM transactions, they were basically saying they were putting these together, bundling them up. It was not necessary for approval of the transaction for me to sign, but they had a provision for me to sign.

I don't recall receiving that memo. Had I received that memo, what I would have done is looked at the specific transactions. If Rick Buy and Rick Causey had signed those transactions, and I looked at the transactions and they looked reasonable, I would have had no trouble signing for those transactions.

Mr. GREENWOOD. The time of the gentlelady from Colorado has expired. The Chair recognizes the gentleman from Florida, Mr. Stearns.

Mr. STEARNS. Thank you, Mr. Chairman.

Mr. Skilling, just sort of as an oversight, I think that your strategy at Enron has been basically to build an asset light strategy. Hasn't that been true? I mean, I have seen that in Business Week and other literature, that you have always said that you believed it should be asset light is your strategy for business.

Mr. SKILLING. We were trying to do as much profitable business per unit of assets as we could.

Mr. STEARNS. So just as a commentary, then, the fact that this went into bankruptcy and failed to provide liquidity was really a failure of your strategy for this company, I mean, just in a man-to-man talk here, that you are going around telling all of the literature and all of these magazines that it is asset light, and you just didn't have liquidity, and this company failed in a large part because of you. I mean, you are not trying to say this morning—this afternoon that you are here saying this company was just flying along 100 percent in good shape, and then you left and things fell apart just because you left?

Mr. SKILLING. Congressman, I think—and we have all read business history—there are things called runs on banks, and you can have——

Mr. STEARNS. Things called what?

Mr. SKILLING. Things called run on the bank. You can have a fundamentally solvent company that is profitable that has an illiquidity problem. That's my interpretation of what occurred.

Mr. STEARNS. No, I understand that. But it is just awfully hard to believe after looking at all of these partnerships, and how they were financed, and Fastow taking money out when nobody on the Board of Directors knew about it, and this fellow reported to you. And I understand he was your protege.

And so here we have all of these partnerships, and you are saying—you are saying today basically you did not know any of the financial structure of LJM. Isn't that what you are saying today?

Mr. SKILLING. I said that we knew that a——

Mr. STEARNS. I mean, you. You. I mean——

Mr. SKILLING. Me, as a member of the Board of——

Mr. STEARNS. Yes, you are saying you didn't know anything——

Mr. SKILLING. [continuing] Directors and a member of management of Enron Corporation, knew that a private equity fund was being established, and that one of our executives, Andrew Fastow, would have a role, an economic interest in that entity. We did know that, yes.

Mr. STEARNS. So Mr. Fastow reported to you. Did you ever talk to Jeffrey McMahon?

Mr. SKILLING. Yes.

Mr. STEARNS. Okay. Was he in your office regularly, or did you talk to him infrequently?

Mr. SKILLING. Pretty infrequently.

Mr. STEARNS. Pretty infrequently. Now, as I understand, his title was basically he was President and Chief Operating Officer of Enron. And you just didn't talk to him very much.

Mr. SKILLING. I am sorry. Say again?

Mr. STEARNS. It says here that he was President and Chief Operating Officer of Enron.

Mr. SKILLING. I think that happened last week.

Mr. STEARNS. Okay. Okay. Yes. But you are saying you talked to him infrequently, then.

Mr. SKILLING. I would guess probably Jeff and I would talk once a month.

Mr. STEARNS. We have got a calendar of his which shows that he met with you on March 16 at 11:30 a.m. Now, this is Tab Number 10. You might want to just take a look at that. And, you know, one of the reasons he was meeting with you, because he had some concerns about the LJM partnerships.

And we have Tab Number 9, which is before that—you are welcome to look at—talks about his concern and basically conflicts of interest, talking about the financing structure. Do you remember talking to him about this on March 16?

Mr. SKILLING. Yes, I do.

Mr. STEARNS. Okay. Well, that is good. We have established that Mr. McMahon's schedule is correct. He had you down for an 11:30 appointment. We have his notes before he met with you, which you can look at at Tab 9. We have his schedule. So he did meet with you.

So my question is to you, did he talk to you about LJM and the financing structure or any of the partnerships?

Mr. SKILLING. My recollection of the meeting is Jeff came in and had some concerns about his compensation related to LJM.

Mr. STEARNS. He never talked about any conflict of interest in any of these partnerships? He never mentioned anything like that to you?

Mr. SKILLING. What his concern was as far as compensation was concerned is Jeff felt that he was being put in an awkward position in having to negotiate with Andy, and that that might—this is my recollection. That it might impact his compensation package.

Mr. STEARNS. He never mentioned to you that, "I am concerned what is the best interest of the shareholders here"?

Mr. SKILLING. I don't recall that. I recall this being an issue of compensation.

Mr. STEARNS. Well, you know, if you look at his schedule, he went out and talked to—on the 31st of March he met with Fastow, and we have had a case on April 6 he had an appointment, and basically his job changed. Did you know about that?

Mr. SKILLING. Yes.

Mr. STEARNS. And why did his job change?

Mr. SKILLING. At the time we were setting up a new business that was related to some internet activities that we developed at the company, and we were looking for someone to be a senior executive in that business. And that search had been under the discussions, and that search had been underway for quite some time.

Mr. STEARNS. My time has expired, but I have a hard time believing, Mr. Skilling, that when he came to you he did not describe these conflicts of interest. He didn't describe his huge apprehension with these partnerships. And he didn't relay his angst about this whole process. And you are saying to me today that you remember him coming in, but he was just talking about compensation, and you really don't really have much information on the financing structure of the LJMs. I have a hard time believing that.

Mr. GREENWOOD. The time of the gentleman from Florida has expired. The Chair recognizes the gentleman from Illinois, Mr. Rush.

Mr. RUSH. I want to try to get us out of the quagmire that we seem to be in as it relates to the meeting in Florida and what transpired at that meeting in Florida. And I want to ask Dr. Jaedicke, were you at that meeting in Florida?

Mr. JAEDICKE. Yes, I was, sir.

Mr. RUSH. Okay. Do you recall Mr. Fastow telling you that Mr. Skilling would approve every LJM deal?

Mr. JAEDICKE. Sir, that occurred, I believe, in the Finance Committee or the Board of Directors. I know it is in the minutes. I do not personally recall that discussion.

Mr. RUSH. Yes. Mr. Winokur, were you at that meeting in Florida?

Mr. WINOKUR. Yes, sir, I was.

Mr. RUSH. Do you recall Mr. Fastow telling you that Mr. Skilling would approve every LJM deal?

Mr. WINOKUR. Sir, I believe that the minutes, as presented, were correct and were approved by the Finance Committee. And so to the best of my recollection these are what happened.

Mr. RUSH. Okay. Let me ask Mr. Skilling, were you at that meeting?

Mr. SKILLING. Like I said, I was at the meeting. I walked into and out of the Finance Committee on several occasions, but I was at that meeting.

Mr. RUSH. Okay. Mr. Winokur, do you recall Mr. Skilling being at that meeting?

Mr. WINOKUR. Sir, the minutes report that he was there, and that he participated in the conversation. I have no other recollection than what the minutes say.

Mr. RUSH. Okay. So he participated in the total discussion, all of the conversations, particularly as it related to the issue of controls and his sign-off?

Mr. WINOKUR. Sir, to the best of my knowledge, the minutes reflect what happened. I have no other recollection.

Mr. RUSH. Okay. Did anyone ever tell the Board that Mr. Skilling wasn't going to sign off on the LJM deals?

Mr. WINOKUR. Congressmen, if that is a question directed at me, no one ever told me of that.

Mr. RUSH. How about you, Dr. Jaedicke?

Mr. JAEDICKE. No, sir. I do not recall ever hearing that.

Mr. RUSH. So are you—are both of you under the opinion that Mr. Skilling would sign off on all of the LJM deals?

Mr. JAEDICKE. Yes, sir, I was.

Mr. RUSH. Okay. Do you—Mr. Winokur?

Mr. WINOKUR. Sir, the presentation said—the minutes described that these were mechanisms that already had been put in place. I believe that these had been put in place, and I never was told otherwise.

Mr. RUSH. All right. Let me refer you to the minutes here on page 2. It says, "He," which is Mr. Fastow, "He then discussed the mechanisms that had been put in place to mitigate any potential conflicts, including, one, his fiduciary responsibilities to the company; two, the Office of the Chairman or the Board could ask him to resign from LJM funds at any time; three, Messrs. Buy, Causey, and Skilling approve all transactions between the company and the LJM funds; four, that there is an annual Audit and Compliance Committee review of the company's transactions with the LJM funds; five, a review of his economic interest in the company and the LJM funds is presented to Mr. Skilling; and, six, there is no obligation for the company to transact with the LJM funds." Do you recall those statements?

Mr. WINOKUR. Yes, sir, I believe that the minutes reflect accurately the discussion to the best of my recollection.

Mr. RUSH. Okay. Now, as of on the fifth criteria that you have here, "Review of his economic interest in the company and the LJM funds is presented to Mr. Skillings," was that ever done? Was that financial review or economic interest review ever done by the company or by your committee?

Mr. WINOKUR. Not by my committee, sir.

Mr. RUSH. Okay. Was that ever done by Mr. Skilling?

Mr. WINOKUR. Sir, I think Mr. Skilling is better——

Mr. RUSH. Mr. Skilling, was that ever done by you? Did you ever do——

Mr. SKILLING. Yes. This was requested, that Mr. Fastow give me a summary of his economic interest. He presented me with a handwritten document subsequent to that that gave a view of his economic interest in LJM.

Mr. RUSH. Can you explain to the committee what that economic review indicated? What did it state?

Mr. SKILLING. As best I recall—and I don't have a copy of it—but as best I recall, it was a handwritten sheet of paper, and it basically was split onto two sides. And on one side it said something to the effect of total return to Mr. Fastow under a set of assumptions. And the set of assumptions, as I recall, was a 20 to 25 percent rate of return on LJM over a 5-year period, and this was a cumulative 5-year return that he would earn from his interest in LJM.

On the other side of the page was a calculation that showed under the assumption that Enron stock price continued to grow at 15 percent a year, which was our basic assumption when we were doing compensation decisions, if Enron stock continued to grow at 15 percent a year, what would his total compensation package be from Enron.

And, again, I do not have a copy. I don't have a copy of this, but my recollection is that the number that was shown for Enron compensation from his ownership of Enron stock and options was consistent with what had been presented to our Compensation Committee, because we did the same sort of calculation in the Compensation Committee.

The number that was shown for LJM was something on the order of one-fifth of that number. It was a much smaller number. And I said to Andy, "How have you calculated or accounted for fees?" Because I think, as Mr. McMahon mentioned, it would be typical to have a 2-percent fee related to this. He said, "I have not included—I have included the fees, but I have not included expenses associated with that fee."

Mr. RUSH. Can you tell us what those numbers were, what percentages?

Mr. SKILLING. You know, I eyeballed it, and what I came up with just eyeballing it was that a cumulative 5-year rate of return, or return to Mr. Fastow, would be something on the order of one-tenth of what his return would be from his Enron stock assuming that our stock continued to escalate. And if pushed——

Mr. RUSH. Can you tell us the amounts? Can you——

Mr. SKILLING. You know, horseshoes and hand grenades. My recollection is that the number he had for total Enron-based compensation if the stock continued to escalate would have been something on the order of $50 million. And so a ten to one ratio—it is my recollection that the number that was presented for LJM would have been something on the order of $5 million over the time period.

Mr. RUSH. So he was really making—he said he would make $10 million, but he was really making $30 million over a 2-year period, is that right? Is that what you are saying?

Mr. SKILLING. The presentation that Mr. Fastow presented to me was a projection for a cumulative 5-year rate of return. So this was from that—from the inception of LJM, for the next 5 years under a set of assumptions, which was a rate of return of the fund, how much he would make over 5 years. And my recollection is that was something one-tenth of the order of the number that——

Mr. RUSH. But he really made $30 million during this period of time, is that right?

Mr. SKILLING. I don't know. I have read the same newspaper accounts that I am sure you have read. I have seen those numbers. I have no first-hand knowledge of that.

Mr. GREENWOOD. The time of the gentleman has expired. The Chair recognizes the gentleman from Louisiana, Mr. John.

Mr. JOHN. Thank you, Mr. Chairman.

Mr. Skilling, do you believe that the implosion of Enron started August 15?

Mr. SKILLING. No, I don't believe that.

Mr. JOHN. Okay. So you left on August 14, and what I am hearing from you is that you did not know about these documents or deals, and you were not apprised of that. And it just seems fascinating to me that the seventh largest corporation, the largest bankruptcy in America's history, if you like football somewhat, the analogy could be that you were at times the quarterback as the CEO, did not know of anything happening, and your departing words were everything seemed fine when you left on August 14.

So think that maybe it started before you left, the deterioration of Enron, and what ultimately happened and took only 4 months?

Mr. SKILLING. Listen, all I can do is I can hypothesize. I don't have the facts. I mean, I left——

Mr. JOHN. You were the quarterback.

Mr. SKILLING. I left on August 14, and I know what I knew on August 14, and I know what I didn't know on August 14. And a lot transpired subsequent to me leaving. Again, as I have said, my hypothesis, my conjecture, is that it was a run on a bank, that there was a liquidity issue. That is pure conjecture on my part.

It seems consistent with the sort of panics and the sort of changes or meltdowns of financial institutions that you used to see at the turn of the century because I can't for the life of me—cannot for the life of me understand how we could go from where I thought the company was to bankruptcy in such a short period of time.

Mr. JOHN. Mr. Jaedicke, do you—in as short as you can, can you surmise what you think ultimately happened?

Mr. JAEDICKE. I am sorry. Do you mean what ultimately——

Mr. JOHN. What ultimately happened to the demise in the deterioration of 4 months. I mean, in as few words as you possibly can, I know it is a very complicated situation.

Mr. JAEDICKE. Well, sir, I am not the expert on this. As I look back, I guess I would say that if some of our asset sales and things like that had gone better at the time, that may have helped. That didn't happen. There was a liquidity issue. I think the market lost confidence in Enron.

Mr. JOHN. Why do you believe that they did lose confidence? Did it have anything to do with these partnerships that were capitalized by Enron's stock?

Mr. JAEDICKE. I would imagine it did, sir. I would imagine it did.

Mr. JOHN. Okay. Let me read—Mr. Skilling, I would like to read a part of the Powers report, and I would like your—if you agree or not. As a result of Enron's partnerships, particularly the Raptors, Enron improperly inflated its reported earnings for a 15-month period from the third quarter 2000 to the third quarter 2001 by over a billion dollars.

This means that more than 70 percent of Enron's reported earnings for the period were not real. How could this have happened? Let me ask you, how could this have happened?

Mr. SKILLING. I have no understanding of where that number came from. That was certainly not my——

Mr. JOHN. Is that a fact that in a 15-month period that the earnings were overstated?

Mr. SKILLING. As I told you, when I left on August 14, I thought the financial reports accurately represented the financial condition

of the company. I don't know what that billion dollars number is. I don't know what the assumptions were that went into that.

Mr. JOHN. Mr. Winokur, do you, as an architect of this report, do you agree with what I just read?

Mr. WINOKUR. Sir, the committee relied on the Deloitte & Touche accounting consultants for those numbers. To the best of my knowledge as a member of the committee, those are right under the assumptions that they used to develop them. We have not heard, obviously, Arthur Andersen's response to the Deloitte & Touche analysis.

Mr. JOHN. Here is another statement of the Powers report, which really I think surmises, I believe, the root of what happened, and it was the non-transfer of risk in some of these partnerships. So when, in particular, one that I am somewhat familiar with—there were lots of them—was the Rhythms. I think it was—I don't remember the—the Cayman partnership.

Basically, what happened is that partnership needed capitalization to purchase a put from Enron. And the capitalization—under the rules they needed 3 percent outside funds at an arms length and unrelated party. The money that this partnership got was stock from Enron.

So, in fact, it was a double whammy as the stock of Rhythms obviously, as a dot com, would go down—was going down. The partnership could not—did not have the assets that they had because the fact that the dollars were eroding from the stock, plus the stock at Enron.

So there was no risk, and that is what the Power Report kept alluding to, that the only way that these things were legal and not fraudulently done was to make sure that some of the risk was out of the hands of the primary company. And in this case Enron's stock was supporting and capitalizing all of these partnerships, and they were approved by somebody in the companies. And I believe that that is ultimately what happened. And we have 4,000 people that—and many, many investors that lost their money.

I am out of time, but I will be back.

Mr. GREENWOOD. The time of the gentleman has expired. The Chair recognizes the gentleman from Texas, Mr. Green.

Mr. GREEN. Thank you, Mr. Chairman.

And I guess the frustration that my colleague from Louisiana has expressed I can't believe a Board of Directors that is paid $300,000 a year, that for two and a half hours on the Finance Committee did not see what was happening.

And, Mr. Skilling, sitting here and listening that you didn't know as the CEO—let me quote—in your testimony earlier you said financial statements, when you left on August 14, were reflective of the good condition of the company. I am paraphrasing, but is that what you said?

Mr. SKILLING. I said that I believed that the financial statements that had been released were reflective of my understanding of the financial condition of the company.

Mr. GREEN. Well, I don't know how you could tell that, because we had testimony yesterday that nobody could understand Enron's financial statements. And it was based on trust, and that is what,

if it was a run on the bank—I disagree with that—but it was because that trust was lost, and that is what happened.

Let me follow up on the testimony of my colleague. On August 14, everything was fine, and yet in the Powers report from the Board, as a result of Enron's partnerships, particularly the Raptors, it inflated its reported earnings for a 15-month period from the third quarter of 2000 to the third quarter of 2001 by more than a billion dollars.

That means that 70 percent of Enron's reported earnings for this period were not real. How could this have happened? That was on your watch. How could it have happened without some inkling that the COO would know?

Mr. SKILLING. Congressman, again, I don't know where that number came from.

What was the accounting firm that did it, Mr. Winokur?

Mr. GREEN. Well, let me go on to continue to quote the Powers report, so we don't—we only have 5 minutes. "By March of 2001, it appeared that Enron would be required to take a charge against earnings of more than $500 million." That is in March of 2001; didn't actually have to do it until October that maybe started the run on the bank that you said. Five hundred million to reflect the inability of the Raptors to pay. Rather than take that loss, Enron compounded the problem by making even more of its own stock available to the Raptors, $800 million worth.

Again, that was on your watch, well before August 14. You know, and, again, that is in the Powers report from the Board of Directors that you served with. Again, how can someone who is a CEO not have some inkling of what is happening?

Mr. SKILLING. Well, again, the intent, as I understood it—and I believe the intent as the Board and the rest of management understood it—is that we were creating a hedge for some highly volatile, high technology stock investments. In the first quarter of 2001, many of those high technology investments were dropping in value. The entire optical fiber business was collapsing at that point.

Mr. GREEN. Okay. That was a half a billion dollar hedge. Now, even with Enron that was more than pocket change.

Mr. SKILLING. I did not hear that number, Mr. Green. I had asked, what is the status of our hedges? Are our hedges all right? And I was assured that our hedges were correct. So to the best of my knowledge——

Mr. GREEN. Okay. Let me——

Mr. SKILLING. [continuing] it was not an issue at that time.

Mr. GREEN. Well, let me get on to another question to Mr. Winokur. Mr. Winokur, in your testimony you said, "I must tell you that as a member of the Special Investigative Committee, and more generally as an independent member of the Board, have been deeply disturbed by what the investigation revealed. The report makes clear that those in management on whom we relied to tell us the truth did not do so." Who didn't tell you the truth? Was it Mr. Skilling before August 14? And what didn't they tell you?

Mr. WINOKUR. Sir——

Mr. GREEN. Was it the half a billion dollars that we knew about that management—somebody in management knew about in March of last year?

Mr. WINOKUR. Congressman, the earnings restatement—accounting restatement in September included Chewco, and we were not told that Mr. Kopper was a participant as an Enron employee. And we, of course, did not know as the Board that there was not adequate capitalization. It was the LJM Rhythms——

Mr. GREEN. Okay. The Powers report——

Mr. WINOKUR. [continuing] who had been there as an accounting——

Mr. GREEN. Excuse me. Let me finish. The Powers report reported—and I mentioned it—the $800 million.

Mr. WINOKUR. Yes, sir.

Mr. GREEN. Did the Board have any idea that that was being done?

Mr. WINOKUR. We had no idea.

Mr. GREEN. You know, the Powers report also mentions that the Finance Committee met regularly, five times per year, for an hour and a half to 2 hours, typically before each regular Board meeting. It seems like there should have been a lot more time spent if a half a billion dollars and $800 million can be lost.

Mr. WINOKUR. Sir, had we been presented with the prospect of an $800 million equity requirement to be issued to overcome the $500 million of losses in Raptor, I believe we would have taken substantially more time.

Mr. GREEN. I know a lot of Members of Congress—and I was on a hospital board as an outside member, and we had the lead because—as a Member of Congress. But our job was to ask those questions of management on a very small scale compared to Enron. And those questions weren't asked. I can see maybe in 1½ or 2 hours five times a year maybe the Finance Committee didn't have the time to do it.

But, again, the Board has a responsibility, and it looks like from the Powers report you can only say they didn't tell us so far. And I guess that is what surprises me. The testimony from both of you today—and Mr. Skilling is that, you know, we were—maybe we were born at night but not last night. And that is just amazing what we are hearing, that we didn't know as Board members. We were paid $300,000 a year to be Board members, and you didn't ask questions. I know people who are paid $1,000 for a meeting or $500 a meeting who ask tougher questions.

Mr. GREENWOOD. The time of the gentleman has expired. The Chairman recognizes the gentleman from Massachusetts, Mr. Markey, for 5 minutes.

Mr. MARKEY. Thank you, Mr. Chairman.

What day, Mr. Skilling, did you leave Enron?

Mr. SKILLING. August 14.

Mr. MARKEY. August 14. Sherron Watkins wrote a memo on August 14 to Ken Lay, and she said, "Skilling is resigning now for personal reasons, but I think he wasn't having fun, looked down the road and knew this stuff was unfixable and would rather abandon ship now than resign in shame 2 years later." Same day you are resigning this woman down deep in the company knows about all of these problems, everything that is going on. And you are sitting here as the CEO saying you just decided on the same day you

are walking away and you really don't know much about any of the things that any of the members here are asking about here today.

Wasn't Ms. Watkins really correct that you were abandoning ship on a day that you already knew, as she did, that this company had deep problems, that you had already identified them, and you were just walking away without warning investors, without warning employees, without telling everyone what the real reason was that you were quitting Enron?

Mr. SKILLING. Congressman, I can just say, again, on the day I left I absolutely unequivocally thought the company was in good shape.

Mr. MARKEY. Well, it is hard to believe, Mr. Skilling, given your reputation or competence or hands-on knowledge, and the fact that there was plenty of evidence that other people knew all throughout the company that there was a big problem, not just one big problem but multiple problems.

Now, Mr. Skilling, according to the Watkins memo, Mr. McMahon and Mr. McMahon's testimony and the Powers Committee report, Mr. McMahon approached you with serious concerns about the inherent conflicts of interest in LJM. Is that true?

Mr. SKILLING. Again, my recollection of the discussion that I had with Jeff is that he was concerned that because there was a conflict of interest with Andy that in discussions that they had that that would somehow hurt his compensation.

Mr. MARKEY. So did he lay out specific steps that he thought should be taken to address these conflicts?

Mr. SKILLING. I don't recall.

Mr. MARKEY. You don't recall. Now, according to both the Watkins memo and the Powers report, you took no action after McMahon warned you, even after being told that Fastow was pressuring Enron employees who were negotiating with LJM. Is that true?

Mr. SKILLING. In the discussion, again, as I recall on that day when Jeff came in to see me, he said he was concerned about his compensation. And I said, ''Jeff, you know how compensation is determined around here,'' and maybe you all don't know this. But our compensation system was based on something called the PRC, Performance Review Committee. There were typically 20 to 24 people on the Performance Review Committee. Jeff's concern was that Andy was on that Performance Review Committee and might influence his compensation.

What I said to Jeff is, ''Jeff, if you negotiate hard on behalf of Enron, and if you take a baseball bat to Andy Fastow in a negotiation that benefits Enron Corporation, 23 of the 24 people on that committee will be cheering for you.''

Mr. MARKEY. Okay. Three days later, you reassign Mr. McMahon. Now, why did you reassign him?

Mr. SKILLING. Well, first, I will say there was absolutely no connection—no connection——

Mr. MARKEY. He is warning you about conflicts of interest. You don't take any action. Three days later he gets reassigned. There is no connection.

Mr. SKILLING. There is absolutely no connection.

Mr. MARKEY. You resign on August 14. Sherron Watkins writes a memo on August 14. There is no connection.

Mr. SKILLING. I think Sherron wrote the memo in part because I did resign.

Mr. MARKEY. Right.

Mr. SKILLING. I wouldn't be at all surprised if that is what triggered it.

Mr. MARKEY. Exactly.

Mr. SKILLING. She certainly didn't confide her concerns with me. But as far as the relationship between Jeff McMahon moving the finance group into the industrial products group, there was no connection whatsoever. It was a huge promotion for Jeff.

Mr. MARKEY. A huge promotion. Not viewed as——

Mr. GREENWOOD. The time of the gentleman has expired. The Chair recognizes the gentleman from California, Mr. Waxman, for 5 minutes. Mr. Waxman, do you care to inquire?

Mr. WAXMAN. I do.

Mr. GREENWOOD. You have 5 minutes, sir.

Mr. WAXMAN. Mr. Skilling, did you know—you knew there were partnerships, didn't you?

Mr. SKILLING. Yes.

Mr. WAXMAN. Who came up with the idea of the partnerships?

Mr. SKILLING. Which partnerships in specific—I mean, Enron had literally thousands of partnerships, and they came from various of the operating business units.

Mr. WAXMAN. So you knew there are thousands of partnerships. Did you know that—you have said that to your knowledge you didn't have any idea that Enron was in a shaky financial situation, and you don't think you misled others. But in March 2001, Bethany McLean, a reporter with Fortune magazine, first raised questions about Enron's financial condition.

She wrote in Fortune magazine that the company's financial reports were missing crucial information. She asked a simple question in the article that no one could seem to answer. How exactly does Enron make its money? Mr. Skilling in response to this criticism—you reportedly called Ms. McLean unethical and not doing her research. Three Enron executives flew to New York to try to convince Fortune's editors that Ms. McLean was wrong. Kenneth Lay also called Fortune's managing editor to complain.

Mr. Skilling, it is clear now that Ms. McLean was right, and that you were wrong. She was asking all of the right questions about how Enron made its money. If that is the case, it appears as if you were trying to bully someone who was asking very basic questions about Enron. How could it be that she would know basic questions about Enron and raise them, and you didn't seem to know about them? You got very upset at her, didn't you?

Mr. SKILLING. I very specifically remember the telephone conversation that I had with the Fortune reporter. As a matter of fact, she had been working on a story, it was my understanding, for about a week. She had called up and said she wanted 15 minutes of time to discuss some issues, remaining issues related to this report. I said fine.

And I was between two meetings—I think it was at 9:30, between 9:30 and 9:45 some Tuesday—or it might have been a Mon-

day morning. I forget the specific day, but there was 15 minutes carved out of my calendar to spend some time with the Fortune reporter. She called up and started asking some very, very specific questions about accounting treatment on things. I am not an accountant, and I could not answer them, and I said to her——

Mr. WAXMAN. But her——

Mr. SKILLING. I said to her, "Look, we can have our people come up. I will have our Chief Accounting Officer. I will have our Chief Financial Officer. I will have whoever you want come up to explain these specific transactions. I have got 6 minutes left before I have to be in a meeting, and I can't get into the details, and I am not an accountant." And she said, "Well, that is fine. We are going to do the article anyway," and I said, "If you do that, I personally think that is unethical, because we are making available whatever resources you need to get full and fulsome answers to the questions that you have."

Mr. WAXMAN. Mr. Skilling, let me interrupt you.

Mr. SKILLING. And the next day——

Mr. WAXMAN. Let me interrupt you.

Mr. SKILLING. [continuing] our Chief Financial Officer and our Chief Accounting Officer flew to New York at Enron's expense to sit down, not with the editors but to sit down with the reporter on that story and help her understand the questions that she was asking.

Mr. WAXMAN. And was her article critical?

Mr. SKILLING. Yes, it was.

Mr. WAXMAN. And did that raise any concerns in your mind that maybe she knew something that you should know about?

Mr. SKILLING. I will give you my recollection of the gist of the article—is basically she was saying that we continue to sell at a high PE multiple, and that was at a time when anyone that had a high PE multiple was being absolutely hammered in the stock market. This was February and March of 2001, and so I think the basic accusation was that we were at a high PE multiple and our PE multiple was too high.

Mr. WAXMAN. The next month, April 2001, you were in a conference call with Anliss to discuss the company's first quarter earnings. During that conference call, Richard Grubman of High Fields Capital Management was critical of you for not being able to produce the company's balance sheet, which is a basic piece of financial information. Instead of providing him with a balance sheet, you called him a vulgar name. As I understand, you called him an asshole.

Now, you were obviously upset that he was raising a question. He was an outsider raising a question about the balance sheet of your company. Why were you so upset, and did it raise in your mind that maybe that he knew something you ought to find out about?

Mr. SKILLING. Congressman, he did not, to my recollection, raise an issue about our balance sheet. He was raising an issue about why we didn't publish our balance sheet on the same day that we came out with our earnings, which we have never done. There is a 3-day delay between the time that we issue our earnings re-

lease—or I think it is a 3-day delay—between the time we issue our earnings and when the balance sheet came out.

And I explained that to him probably two or three times, and he kept coming back to it. We had a conference call. We had something on the order of 300 analysts who were waiting to ask questions on that conference call, and he refused to accept the fact that this was standard operating practice and always had been standard operating practice within Enron.

If I could go back and redo things, I would not now have used the term that I used. I apologize to my shareholders. I apologize to you for having done that. At the time, I was tired. The man—I believe he was a short-seller of the stock. He had no interest in what was in the balance sheet. In my opinion, I thought he was very interested in just monopolizing the conversation to suggest that there was something wrong that I didn't believe was the case.

Mr. GREENWOOD. The time of the gentleman from California has expired. The Chair notifies the committee and the witnesses that we are going to do a second round of questions. It probably will not take as long as the first round of questions, but we would ask your forbearance.

The Chair recognizes himself for 5 minutes.

Mr. Skilling, here is the problem I have at the end of this day. You came in here and you and I stood up and we raised our right hands and you swore to tell the truth. And before you did that, Mr. McMahon came in here and he and I raised our right hands and he swore to tell the truth.

And when all is said and done, I can believe him or I can believe you, but there is no way I can believe both of you. And that is the problem that I have. And let me tell you why.

On March 16, 2000, at 11:30, Mr. McMahon came into your office, and he brought with him these notes. And these notes would indicate he says—it is Tab 9 in your book if you would like to turn to it. And he says to you, "I am in an untenable situation." He says that Andy Fastow wears two hats, and his up side compensation is so great that it creates a conflict.

He says, "I am right in the middle of it." He says, "I find myself negotiating with Andy on Enron matters and am pressured to do what Andy wants. I do not believe this is in the best interest of the shareholders. I did not ask to be put in this position," he says.

He says, "My integrity forces me to continue to negotiate the way I believe is correct. However, Andy Fastow is my boss." He says, "I must know, in order to continue to do this, I must know I have support from you, and there won't be any ramifications. I believe Andy Fastow has already affected my compensation."

He poured his soul out to you. He told you he is conflicted, his integrity is at stake. And he essentially said to you, "We have got a cesspool here, boss, and I need you to clean it up, because I am not comfortable swimming in this cesspool any more." And he said, "If you can't clean up this cesspool"—and this is the cesspool, of course, that took the company down not that long afterwards, he says, "Then, get me out of it. Get me out of this cesspool, because I am not comfortable here anymore."

And you say, according to him, "I will fix it. I will fix it." And he brings additional matters up. He brings up the fact that LJM

is on the same floor, that the staff meeting has attendees from both. This is all a description of how this is a cesspool.

So he says to you, "You either clean up the cesspool or you get me out of the cesspool." You say, "I will fix it." It looks to me like what you do is you say, "I will get you out of the cesspool." Now, when you have been asked about that meeting, you have been asked repeatedly about that meeting, which to me if I were in your shoes and one of my staff people came in and said, "The situation I am in is untenable, and it is compromising my integrity. Boss, help me," I would remember that. I would remember that if that were 3 years ago or 10 years ago. Okay?

And your recollection of that meeting seems to be, yes, Jeff came to see me about his compensation package, and we worked that out. Who is telling the truth?

Mr. SKILLING. I can only tell you my recollection of the meeting. I don't think from what I have seen on this piece of paper that there is anything that is radically different in my recollection. What Jeff is saying here is that requests are options. You have got to do one of two things. One, I must know I have support from you and there won't be compensation ramifications.

Mr. GREENWOOD. What did he want your support for? He wanted your support because his integrity was at stake.

Mr. SKILLING. He wanted support——

Mr. GREENWOOD. He said, "It is untenable. It is wrong. How can we be in this situation we are"——

Mr. SKILLING. Congressman, my assumption and my recollection of the meeting was that he wanted my support in the Compensation Review Committee meetings, and I made it absolutely clear to him in that session, absolutely clear to him, that he should go with his conscience, he should do everything humanly possible to protect the interests of the Enron shareholders, and I would absolutely support him in that.

And I think it is somewhat telling that he would come to me and he would say as long as I have got that commitment from you I am okay. And so——

Mr. GREENWOOD. Well, why did he switch—well——

Mr. SKILLING. He switched jobs for—it was a totally, totally unrelated——

Mr. GREENWOOD. Let me retract that question for a second. A guy comes to you and he says, "Whether I am in this job, or the next guy is in this job, it is still a cesspool, because this is crazy, having my boss negotiating with me. He is in charge of my salary. I have got to either represent the stockholders or do what he wants me to do." He says, "This is a nutty way and a dishonest way to do business." You don't walk out of that meeting saying, "I have got to fix this"?

Mr. SKILLING. Congressman, again, your boss, under our compensation system and our performance review system, was not responsible for your compensation. It was a committee called the Performance Review Committee. And if everyone in that room believed that you were sticking up for Enron's interests, and your boss was——

Mr. GREENWOOD. I am not asking you that question. I am asking you why it was that when he came to you and said, "Either get me

out of the cesspool, or clean up the cesspool," that you didn't say, "I will clean up the cesspool. I will not let this stand. I will go to Andy and say, 'This doesn't work.' I will not only back you up if you happen to go to bat; I am going to go to bat because that is my job. I am the boss."

Mr. SKILLING. I think you are mischaracterizing what the decision was and what the options were that were put to me. It is my recollection that Andy said he wanted my support. He wanted my support, and he wanted, if he got that support——

Mr. GREENWOOD. Right. But the job that he ended up with he turned down. You know he didn't want that job. That wasn't his first choice. Earlier in the month he had turned that job down.

Mr. SKILLING. I have no recollection of that.

Mr. GREENWOOD. He came to you and said, "Boss, this place stinks. It is wrong. It is not right for the shareholders. It is an untenable position that conflicts the integrity of anybody who sits in this seat."

Mr. SKILLING. I don't recall——

Mr. GREENWOOD. And you say to him, "We will get you another job."

Mr. SKILLING. [continuing] that he said anything about this being bad for the shareholders. He was concerned that it could become bad for the shareholders if he did not have my support for him sticking up for Enron in those discussions, and I gave him my unequivocal support. There is no time—no time—that I have been at Enron Corporation that I have engaged in any decision that was not in the interest of—

Mr. GREENWOOD. You said that you said you will fix it. And it seems to me that there is a difference between saying, "I am right behind you. You go and cross swords. I will be behind you," and saying, "Give me the sword. That is my job. I will fix it."

Mr. SKILLING. I told Mr. McMahon, to the best of my recollection, that I totally supported him doing whatever necessary to protect the interests of Enron shareholders. And I believe that subsequent to that I also had some people check into this whole logistics issue of where people were sitting on the floor and all the rest of that, to see if we could clean that up as well.

The decision of Mr. McMahon to leave, the decision was totally separate, was not in any way influenced—I have nothing but respect for Mr. McMahon, and there is absolutely no connection between those two activities.

Mr. GREENWOOD. So he comes to you and he says, "The Titanic is headed for an iceberg," and you say, "I am going back to bed. But if you tell the guys to steer to the left, I will be right beyond you."

Chairman TAUZIN. Mr. Chairman?

Mr. GREENWOOD. My time has——

Chairman TAUZIN. Mr. Chairman, before you leave the line of questioning, if you will yield a second, I think it is important to note, and perhaps Mr. Skilling would like to comment upon it, that part of the fixing it was to bring in Mr. Glisan into that position, who not only was apparently willing to negotiate with Mr. Fastow but later on actually invested in one of his deals, I think contrary

to the Board's policy, and turned a $6,000 investment into a million dollar investment. Was that part of fixing it?

Mr. SKILLING. As I have said before, and I will absolutely conclusively tell you, I did not know that Mr. Glisan has any investment interest whatsoever in any of those partnerships.

Chairman TAUZIN. And it should be stated for the record, Mr. Chairman, if you would continue to yield, that Mr. Glisan has repeatedly declined an invitation to be interviewed by investigators or to give us any statements in the matter. But it's important to put it in context, Mr. Chairman, that when Mr. McMahon was found a new job, the guy brought in to replace him not only apparently felt it a lot easier to negotiate with Mr. Fastow but actually got in bed with him and invested in the partnerships, and in 6 weeks turned a $6,000 investment into a million dollars. That was fixing it.

Thank you, Mr. Chairman.

Mr. GREENWOOD. The Chair thanks the gentlemen. The Chair recognizes the gentlemen from Louisiana, Mr. John.

Mr. JOHN. Thank you, Mr. Chairman.

Mr. Jaedicke and Mr. Winokur, as Board members, what do you know about the Southhampton partnership?

Mr. JAEDICKE. Sir, we did not know about the Southhampton partnership until we read about it in the paper.

Mr. WINOKUR. I agree with that.

Mr. JOHN. So let me refresh your memory of what the Powers report said about the Southhampton partnership. Mr. Fastow invested $25,000 in this partnership and received $4-1/2 million in approximately 2 months. Two other employees, Mrs. Mordant and Mr. Gleason, invested $5,800 into that same partnership, Southhampton, and 2 months later they returned a million dollars. You did—as the Board of Directors of this company, you didn't know anything about this.

Mr. JAEDICKE. No, sir, not until we read about it in the paper. Not to my recollection.

Mr. JOHN. Since you have discovered this in the Powers report, your experience with being on the Board of Directors, you obviously should have had some say so or some knowledge of this. Who was responsible for notifying you or bringing it in front of you, the Board of Directors?

Mr. JAEDICKE. Well, sir, the original transaction to buy out CalPERS was represented to us as an unaffiliated third party. That was the arrangement to be engaged in. It was never ever brought back to us that it was not an unaffiliated third party, and that there was a related party in it.

Certainly, the code of conduct would have required—take the code of conduct that was read, says that if any officer engages in a transaction that is adverse to the interest of Enron, he needs to have prior approval of that. That was not done.

Mr. JOHN. If this would have gone through the proper channels, and you would have received this as a Board of Directors, do you think that the Board would have signed off on this deal?

Mr. JAEDICKE. No, sir. Not if it was not proper. We also were assured that Arthur Andersen would be following the transaction of the buyout of JEDI, and that we also understood that they were

reviewing those kinds of transactions. So I think it could have come to the Board for many different sources. It did not.

Mr. JOHN. It is interesting, let us move down to Chewco, too. For the life of me, I really can't understand how Mr. Kopper and his partners took a $125,000 investment in the Chewco deal and turned it into $10 million. Can you explain that? That is also part of the Powers report of which, Mr. Winokur, you were a part of.

Mr. WINOKUR. Sir——

Mr. JOHN. How is this possible? How is this deal possible?

Mr. WINOKUR. Congressman, the first I knew of those fees was what came to me during the investigation, the Special Committee report. I did not know, and I think no Board member knew, as the report says, that Mr. Kopper was involved in Chewco. And on the Southhampton matter that you asked before, again, none of those people should have been able to purchase the interests in Southhampton without a specific waiver from the CEO, according to the code of conduct.

Mr. JOHN. Mr. Skilling, have you ever heard of Southhampton?

Mr. SKILLING. No, I have—I had not heard of it until I believe the Special Committee asked some questions.

Mr. JOHN. The Special Committee that Enron——

Mr. SKILLING. The Board of Directors.

Mr. JOHN. [continuing] that the Board of Directors put together, of which Mr. Winokur was on.

Mr. SKILLING. I think that was in November.

Mr. JOHN. So you don't know—not only you just heard of this partnership, you had no idea about this extraordinary rate of return with Enron employees and being partners in Southhampton and Chewco.

Mr. SKILLING. Did not.

Mr. JOHN. Did not know anything about it.

Thank you, Mr. Chairman.

Mr. GREENWOOD. The Chair recognizes Chairman Tauzin.

Chairman TAUZIN. Thank you, Mr. Chairman.

Mr. Skilling, I want you to look at Tab 17, please. It is the Sherron Watkins letter to Ken Lay. In that letter on page 2, the very bottom—and I quote—she states, "Employees quote our CFO as saying that he has a handshake deal with Skilling that LJM will never lose money." The CFO she is talking about is Fastow.

And also, if you will look at the Special Committee's report on page 12, the Special Committee says, "We have identified some evidence that in three of the transactions where Enron ultimately bought back LJM's interest, Enron had agreed in advance to protect LJM partnerships against loss." That is on page 12.

Very specifically, is the allegation by Ms. Watkins' letter and the conclusions of the Special Committee report true? Did you, in fact, have an agreement, a handshake deal with Mr. Fastow to make LJM whole for any losses whatsoever?

Mr. SKILLING. Absolutely not.

Chairman TAUZIN. You totally, unequivocally deny her allegation and the findings of the Special Committee.

Mr. SKILLING. I believe Ms. Watkins said that rumor had it, so I don't believe it is her allegation. But, yes, I absolutely——

Chairman TAUZIN. What she said was that employees have quoted the CFO, Mr. Fastow, as saying that.

Mr. SKILLING. Yes.

Chairman TAUZIN. You say that is not true whatsoever.

Mr. SKILLING. Mr. Chairman, there was no handshake deal between myself and Mr. Fastow, period.

Chairman TAUZIN. And the committee, the Special Investigative Committee for the Board's finding of evidence to substantiate that is also incorrect?

Mr. SKILLING. I don't believe that the Special Committee of the Board used my name with relationship to that. I can only tell you what I know. I had no handshake agreement with Mr. Fastow that would guarantee him a rate of return on his investment.

Chairman TAUZIN. Mr. Skilling, what is the Office of the Chairman?

Mr. SKILLING. The Office of the Chairman was a concept that we applied for reporting purposes. The Office of the Chairman, when I originally joined the Office of the Chairman, when I became Chief Operating Officer, included myself, Ken Lay, and Rebecca Mark. When Rebecca Mark left, it was myself, Ken Lay, and Joe Sutton. And when Joe Sutton left, it was myself and Ken Lay.

Chairman TAUZIN. Now, according to the testimony given by Mr. Jaedicke, the code of conduct allows a senior officer to participate in a transaction in which he has a conflict of interest when Enron—with Enron, if the Office of the Chairman determines this would not adversely affect the interest of the company.

Did the Office of the Chairman make such a determination when it came to Mr. Kopper and his dealings with Chewco or LJM Partnerships?

Mr. SKILLING. I do not recall that it did.

Chairman TAUZIN. But you knew that Mr. Kopper was involved in those partnerships.

Mr. SKILLING. I knew that Mr. Kopper was involved in the management of some of the partnerships. I did not know if Mr. Kopper had any——

Chairman TAUZIN. Is it your understanding that according to Mr. Jaedicke's testimony that the Office of the Chairman in which you were a part must have approved his operations in Chewco or LJM?

Mr. SKILLING. It was my understanding that the CEO of the corporation would have to approve a waiver from the conflict of interest.

Chairman TAUZIN. No, I have just read you what Mr. Jaedicke says is the policy, that the Office of the Chairman can authorize it if it is in the interest of the company.

Mr. SKILLING. We didn't——

Chairman TAUZIN. If you think Mr. Kopper was involved with Chewco and LJM, did you, as a member of the Office of the Chairman, understand that he had to get this approval from you and from Mr. Lay?

Mr. SKILLING. To be quite honest, Mr. Chairman, it is not clear. I am not the person that makes the determination of whether there is a conflict of interest. We have lawyers and our outside lawyers that determine if——

Chairman TAUZIN. I am not asking you about a conflict of interest. Let me try once again to take you through it very carefully, because you are under oath and I don't want to get this wrong for you.

Mr. SKILLING. Neither do I.

Chairman TAUZIN. I am going to read it carefully. The code of conduct allows a senior officer to participate in a transaction in which he has a conflict.

Mr. SKILLING. Wait. Say that again.

Chairman TAUZIN. The code of conduct allows a senior officer to participate in a transaction in which he has a conflict of interest——

Mr. SKILLING. Right.

Chairman TAUZIN. [continuing] with Enron, if the Office of the Chairman determines that this would not adversely affect the interest of the company.

Mr. SKILLING. Yes.

Chairman TAUZIN. My question is: knowing that Mr. Kopper was involved with Chewco, knowing he was involved with LJM, did you make such a determination as a member of the Office of the Chairman?

Mr. SKILLING. I don't recall that any determination was made, because I don't recall that there was ever an issue that there was a conflict of interest involved.

Chairman TAUZIN. Did you inform Mr. Lay that Mr. Kopper was involved with Chewco and LJM?

Mr. SKILLING. I don't recall.

Chairman TAUZIN. Do you know whether Mr. Lay was aware of whether Mr. Kopper was involved?

Mr. SKILLING. I am not aware what Ken knew, but the—Mr. Kopper's participation was well known throughout the company.

Chairman TAUZIN. Mr. Jaedicke, on page 9 of your——

Mr. SKILLING. By the way, it was known by Vinson & Elkins, who would have had responsibility——

Chairman TAUZIN. I am sorry. I didn't hear that. Say that again.

Mr. SKILLING. His participation in Chewco was also known by Vinson & Elkins, to my knowledge. It is my understanding that Vinson & Elkins knew that he was involved, and I believe they would have identified, to the extent there was a conflict of interest, that a waiver needed to be received.

Chairman TAUZIN. Did Vinson & Elkins report to Mr. Lay or to you after they had researched the issue following Ms. Watkins' letter that Mr. Kopper might require such a waiver?

Mr. SKILLING. Mr. Chairman, I had left the company at that point.

Chairman TAUZIN. Let me go back to page 9, then, Mr. Jaedicke, on the—on number 7 of the controls that you say were instituted to protect the company in this extraordinary situation of these partnerships. On number 7 you say, "An LJM approval process checklist was to be filled out to ensure compliance with the Board's directive that transacting with LJM, including questions regarding alternative sales options, a determination that the transaction was conducted at arms length, and a review of the transaction by

Enron's Office of the Chairman.'' Now, you just heard Mr. Skilling define the Office of the Chairman——

Mr. JAEDICKE. Yes, sir.

Chairman TAUZIN. [continuing] as being Mr. Lay and himself and another officer from time to time, is that correct, sir?

Mr. JAEDICKE. Yes, sir.

Chairman TAUZIN. So it was the Board's opinion that all of these transactions had to be approved by Mr. Lay and by Mr. Skilling, is that correct?

Mr. JAEDICKE. I think by the Office of the Chairman, sir, probably would mean either one of them. It could be Mr. Lay or Mr. Skilling.

Chairman TAUZIN. But in any event, the Board's own controls required that you get the approval from one of these two top guys, right?

Mr. JAEDICKE. That was exactly our understanding, sir.

Chairman TAUZIN. But were you satisfied on every one of these transactions that either Mr. Skilling or Mr. Lay approved the transaction?

Mr. JAEDICKE. Sir——

Chairman TAUZIN. And apparently an approval process checklist was to be filled out. Did you ever ask for the approval process checklist to see whether either one of them had approved these transactions?

Mr. JAEDICKE. I don't know that I ever saw the approvals checklist, but we always inquired and were—and had read—had gone over this in the Audit Committee, for example, the controls that were in place.

Chairman TAUZIN. So, in effect, are you telling us in all cases somebody told you Mr. Skilling or Mr. Lay has approved this.

Mr. JAEDICKE. We were told that the controls were in place, they were being followed, and they were working.

Chairman TAUZIN. Mr. Winokur, could you help us with this?

Mr. WINOKUR. Congressman, the Finance Committee also was told repeatedly by members of management that the controls were in place and were working effectively.

Chairman TAUZIN. Including this control number 7.

Mr. WINOKUR. I don't recall in the Finance Committee that the specific control was listed when we got our report, I believe it was from Mr. Causey.

Chairman TAUZIN. Just as a general statement, I mean, help me here, you are members of a Board, and the Board has managers. It has a Chairman and a Chief Operating Officer, all of these officials.

Mr. JAEDICKE. Sir, this particular control would have been one that was listed, identified as a specific control in the report to the Audit Committee.

Chairman TAUZIN. Right.

Mr. JAEDICKE. That was there.

Chairman TAUZIN. Did you ever ever, in the conduct of all of your business as a Board member, ever believe that Mr. Lay or Mr. Skilling was not aware of and approving these transactions?

Mr. JAEDICKE. If your question is, did I think there was any misunderstanding on that? Is that——

Chairman TAUZIN. Yes.

Mr. JAEDICKE. No, they knew the importance of these transactions must have been—had to be well known throughout management.

Chairman TAUZIN. Certainly, the——

Mr. JAEDICKE. Because the Board spent a lot of time on these controls.

Chairman TAUZIN. Yes.

Mr. JAEDICKE. And it was alleged to us that they were being followed, that they were in place, and they were working.

Chairman TAUZIN. Well, how do you——

Mr. JAEDICKE. They were being followed.

Chairman TAUZIN. [continuing] react to Mr. Skilling sitting there right next to you today saying he didn't know that—didn't approve—didn't know he had to approve, didn't know as part of the Office of the Chairman that he had to handle the potential conflict of Mr. Kopper? How do you handle that, knowing as a Board member that common sense tells you the top officers of the corporation must know about these transactions, must know about who is a party to them, who is running them, who is negotiating for the company, and on the other side of the table? How do you handle that? Is his testimony, in your opinion, correct, that he didn't know?

Mr. JAEDICKE. Sir, I could only tell you what the requirements were, what the Audit Committee and others heard about the controls working. It was—we did not know that—to my knowledge, that these approval sheets were not being signed and not being reviewed as it was—as these controls called for. I cannot tell you why that happened.

Chairman TAUZIN. Now, in fact, Mr. Winokur, in your testimony, you make it pretty clear. You say on page 7 that Mr. Skilling reported to us that he was discharging these obligations. It now appears that he did not do so. Do you stand by that testimony?

Mr. WINOKUR. Sir, in the Finance Committee—and I don't—I will have to find the date—we had a report from Mr. Causey with Mr. Buy and Mr. Skilling present is my recollection, that said all of the controls that had been put in place with respect to the LJM partnerships were working effectively.

Chairman TAUZIN. I just want to leave you with one little fact that just astounds me. That if you had a control that said there was an approval process checklist to be filled out, to be filled out to guarantee that the Office of the Chairman approved these transactions—and I am looking at one, and it says very clearly on it, person negotiating for LJM, Michael Kopper, this approval sheet that under your controls had to be filled out and one of the two top officers of the corporation at least, perhaps Mr. Skilling specifically if number 4 is correct, had to sign it to say that everything was okay, identifies Mr. Kopper as the guy negotiating for LJM, when everybody knows that he is an important official in Enron, that he never got a waiver from anybody to negotiate against Enron, and, nevertheless, we are doing deals with him, under controls that require this thing to be filled out, signed, so all of you could see that, in fact, things were being operated under the code of conduct that

you guys obviously were there to enforce. How could this happen? Yes, sir, please.

Mr. JAEDICKE. I don't know how it could happen, sir. I would expect that if it had happened it would have been brought to our attention.

Chairman TAUZIN. But it did. And nobody brought it to your attention?

Mr. JAEDICKE. Nobody brought it to our attention, sir.

Chairman TAUZIN. And the gentlemen sitting next to you, Mr. Skilling, is one of those who didn't bring it to your attention, is that correct, Mr. Winokur?

Mr. JAEDICKE. Well, sir, I would expect—there were a number of controls, I believe, where this could have come to our attention. One is the sign-off of the Office of the Chairman.

Chairman TAUZIN. Yes.

Mr. JAEDICKE. And so if that control had worked, I think we would have known about it. To my knowledge, we did not know about it.

Chairman TAUZIN. Do you believe that Mr. Lay is correct in the interviews he gave to your Investigative Committee that he, too, was being deceived?

Mr. JAEDICKE. Sir, I was not on the Investigative Committee.

Chairman TAUZIN. Mr. Winokur?

Mr. WINOKUR. Congressman, I was not at the interview of Mr. Lay. I read the interview notes, and I believe that he did not know that Mr. Kopper participated in Chewco or LJM, but that is my belief. I was not there to question them.

Chairman TAUZIN. Thank you very much, Mr. Chairman.

Mr. GREENWOOD. The time of the gentleman has expired. The Chair recognizes the gentleman from Michigan, Mr. Stupak.

Mr. STUPAK. Thank you, Mr. Chairman.

Mr. Winokur, I am looking at your testimony and I am on page 7. In the third paragraph down it says, "We also required the Office of the Chair to remain in control of Mr. Fastow's participation." Office of the Chair, who was that at that time that you are referring to here?

Mr. WINOKUR. Well, I believe in the time period of 1999 and 2000 it was Mr. Skilling and Mr. Lay to the best of my recollection.

Mr. STUPAK. Okay. So both Mr. Skilling and Mr. Lay.

Mr. WINOKUR. Yes, sir.

Mr. STUPAK. Okay. In order to ensure that—going on, that this duty was honored, Mr. Skilling and Mr. Lay were given the authority to require Mr. Fastow to resign at any time from his involvement with LJM. Mr. Skilling was also charged with the responsibility to supervise Mr. Fastow's involvement to make sure it did not become a disruption to the company and to ensure that his compensation from the LJM transactions were moderate. Mr. Skilling reported to us that he was discharging these obligations. Now it appears he did not do so.

So this control that you had here, which really was at the hands of Mr. Skilling, failed in this aspect with Mr. Fastow. Is that your testimony?

Mr. WINOKUR. Congressman, Mr. Fastow reported to Mr. Skilling and Mr. Lay. Mr. Skilling and Mr. Lay had every bit of their com-

pensation tied totally to Enron's stock. So it seemed to the Board when this was set in place that they had two reasons to make sure that the compensation was moderate.

Mr. STUPAK. I am not talking about his moderate. I don't care what he was compensated. I care about the last line that I just read to you. Mr. Skilling reported to us that he was discharging these obligations. Now it appears he did not do so. He did not do what? What didn't he do?

Mr. WINOKUR. Congressman, as we have seen——

Mr. STUPAK. Mr. Winokur, this is your testimony. Nothing I am making up. I want to know, what does that line mean? What did Mr. Skilling fail to do?

Mr. WINOKUR. Congressman——

Mr. STUPAK. What I have heard here so far today—we didn't have the information, we don't know, the lights went out during this Board meeting—this is pretty explicit here. It is your statement, sir. I would like you to tell me, what does that statement mean?

Mr. WINOKUR. Congressman, the Special Committee report found that the Office of the Chairman in several instances did not review the LJM deal approval sheets, and that the compensation—I am sorry—that those sheets were to be signed by Mr. Causey, Mr. Buy, and Mr. Skilling. In the October 2000 meeting, we were told they were—had been done so.

Mr. STUPAK. So in the first part of this sentence, Mr. Skilling reported to us that he was discharging these obligations. What did he tell you he was doing to lead you to believe he was discharging these obligations?

Mr. WINOKUR. Mr. Fastow told us in October of——

Mr. STUPAK. Mr. Skilling. What did Mr. Skilling say—what did—Mr. Skilling reported to us that he was discharging these obligations, not Mr. Fastow, Mr. Skilling. What did he say that led you to believe that he was discharging his duties?

Mr. WINOKUR. We were told by people with Mr. Skilling present that these duties were being fulfilled.

Mr. STUPAK. That is not what it says. It doesn't say other people reported to us, with Mr. Skilling present, certain things. What did Mr. Skilling report to us that he was discharging these obligations? I don't think my question—not my question, your words, are that difficult. All I want to know, what did he tell you? What did he report to you that he was doing his duties as CEO/COO? What was it?

You put your faith in this man. He reported back to you. What did he report to you?

Mr. WINOKUR. Congressman, I don't recall a specific report of his dealing with each of these controls. We had reports by other people with him present about his responsibilities, that the controls were working properly.

Mr. STUPAK. This is your testimony under oath.

Mr. WINOKUR. Yes, sir.

Mr. STUPAK. That is not what you are telling me now. You said under oath in your testimony, "Mr. Skilling reported to us that he was discharging"—reported to you as a member of the Board that he was discharging these obligations. It now appears he did not do

so. What did Mr. Skilling report to you as a member of the Board that he was discharging his obligations? You are the Board. He reported to you. You are the only one who can answer that. Not what someone else told you, what did Mr. Skilling tell you as a Board member?

Mr. WINOKUR. Congressman, Mr. Skilling did not report to me personally. I believe that he reported to the Board in a variety of circumstances that the partnerships were being managed properly and that all of the controls were in place. There is not a specific instance in which he reported to me personally that——

Mr. STUPAK. Reported to you as a Board member, right? He reported to you as a Board member. You are a member of the Board.

Mr. WINOKUR. Yes, sir.

Mr. STUPAK. Okay. And you wrote this, right, this testimony?

Mr. WINOKUR. Yes, sir.

Mr. STUPAK. So when it says, ''Mr. Skilling reported to us.'' I will give you that Board—that he was discharging these obligations. It now appears he did not do so. Is that your testimony here today?

Mr. WINOKUR. Yes, sir.

Mr. STUPAK. And you can't remember exactly what it was that he reported to you that now in hindsight he is not doing?

Mr. WINOKUR. No, I do not recall a specific instance of a report, but I recall specific instances of reports to the Finance Committee with Mr. Skilling present that the controls were all working, including the ones that Dr. Jaedicke referred to.

Mr. STUPAK. So then the written portion here, at least this line and a half that I read to you and we have in the record now, that is not correct? Is that what you are saying?

Mr. WINOKUR. Well, Congressman, I believe I have tried to answer that question.

Mr. STUPAK. The controls that you all wanted to make sure that these SPEs worked, and that Enron would be back up and running, they don't work. Who is responsible?

Mr. WINOKUR. Well, sir, the senior officials, the Chief Executive, the Chief Operating Officer, the Executive Vice Presidents, all of the people responsible——

Mr. STUPAK. Mr. Skilling, Mr. Lay, Mr. Buy, Mr. Causey.

Mr. WINOKUR. Yes, sir.

Mr. STUPAK. Where is the Board's responsibility here?

Mr. WINOKUR. Sir, the Board is responsible to, as I said in my opening statement, to direct, to set policy, to review strategic directions, oversee corporate policy, and to monitor. And were told by senior officials at many times—it is all I think laid out in the Powers report——

Mr. STUPAK. Page 3. A number of senior Enron officials we now know did not tell us the full truth. Page 3, middle of the page, who are these senior Enron employees we now know did not tell us the full truth? Who are they? This is your testimony.

Mr. WINOKUR. Well, sir, the Board did not know that Mr. Kopper, Mr. Glisan, and others who participated in the Chewco and the Southhampton partnerships had taken actions that appeared to be adverse to Enron without getting code of conduct approval.

Mr. STUPAK. So when you say, ''A number of senior officials''—sorry, ''A number of senior Enron employees,'' you are only referring to Mr. Kopper and Mr. Glisan?

Mr. WINOKUR. Well, I am referring to them as far as I do not believe, as we now know as the Powers Committee report says, that we got the full story of what was going on from others in the company.

Mr. STUPAK. Going back to my earlier question: did Mr. Skilling, then, give you all of the information that the Board requested when he reported to you, all of the relevant information you needed?

Mr. WINOKUR. Well, I don't know that. I know that the Finance Committee did not receive full reports from Mr. Causey and Mr. Buy.

Mr. STUPAK. I am just taking here retrospect after the investigation these are your words. One page it said, ''Mr. Skilling reported to us he was discharging his obligations, and he did not do it.'' Page 3 you said, ''A number of senior Enron employees did not tell us the full truth.''

Mr. WINOKUR. Sir——

Mr. STUPAK. So I am asking if Mr. Skilling, then, would be one of them.

Mr. WINOKUR. In the Powers report, with respect, for example, to the Raptor restructure transaction in the spring of 2001, I believe the report says that there were conflicting experiences or conflicting indications about the extent to which Mr. Skilling knew or didn't know about the Raptor restructure.

Mr. STUPAK. And he didn't tell the Board.

Mr. WINOKUR. Well, the Board did not know at all about the Raptor restructure, to the best of my knowledge.

Mr. STUPAK. And Mr. Skilling never told you about it?

Mr. WINOKUR. Well, the committee report says there was conflicting evidence as to whether he knew or not. But the Board never knew from anybody—Mr. Skilling, Mr. Causey, Mr. Buy, or anybody—about the Raptor restructure.

Mr. STUPAK. So see no evil, speak no evil, hear no evil, right?

Mr. WINOKUR. I don't understand, sir.

Mr. STUPAK. Thank you, Mr. Chairman.

Mr. GREENWOOD. Thank you.

Mr. Skilling, let me touch on something that is sort of sad, and that is, of course, the suicide of Cliff Baxter. And you mentioned he was your best friend in your opening statement. And I am just wondering, before he died, did you have many conversations with him?

Mr. SKILLING. Yes.

Mr. GREENWOOD. And in any of your conversations, did you have any indication what went wrong or why he was upset? Did he relate to you any of his concerns about anything that would explain what happened?

Mr. SKILLING. Yes.

Mr. GREENWOOD. And were any of them relative to Enron?

Mr. SKILLING. Yes.

Mr. GREENWOOD. And these that were relative to Enron, were they dealing with the financial condition of Enron?

Mr. SKILLING. No.

Mr. GREENWOOD. Were they dealing with the conflicts in the partnerships?

Mr. SKILLING. No.

Mr. GREENWOOD. Were they dealing with the management?

Mr. SKILLING. No.

Mr. GREENWOOD. Were they all just personal, or were they business?

Mr. SKILLING. There were serious business and personal issues.

Mr. GREENWOOD. In the serious business issues, were they dealing with Enron?

Mr. SKILLING. Yes.

Mr. GREENWOOD. And without being indiscreet, is it possible you could give us just a brief explanation of what the serious business problems were that would create in his mind so much angst and concern that he took his life?

Mr. SKILLING. There is—I personally believe the——

Mr. GREENWOOD. Can you pull the mike up just a little bit? I know it is a long day and you are coming to the end of this. I appreciate your help here.

Mr. SKILLING. Cliff's family has gone through a lot. I don't know if it is my job or my role to describe some of the things Cliff talked with me about. I would prefer leaving that to the family, if you could.

Mr. GREENWOOD. I understand. That is why I say that if there is something that was relative to this hearing, to this investigation by this committee, that would help us understand what happened.

Mr. SKILLING. I don't think there is anyone that knew Cliff and spent time with Cliff toward the end that didn't realize—and I don't think this is betraying any confidence with the family—there is no one that knew Cliff toward the end that didn't realize that he was heartbroken by what had happened.

He believed that his reputation, my reputation, the reputation of the Board of Directors, reputation of Ken Lay, people that we had worked with for a long time, and his own personal reputation, were ruined by what had happened to the company and the treatment of what happened to the company by the press. And he was heartbroken by that.

He believed, as I believed, that we had created a great company, that we were doing good things. And to have a lifetime of work denigrated as it was in the press was very painful to Cliff. And he—he is—I can tell one other—Carol, if you are out there, I hope you are okay with this. Carol, his wife, is a very private person. He told this story to a number of people, so I don't believe I am—I mean, you will get the story sooner or later, but Cliff was a very articulate individual. He was a fine man.

And Cliff came over to my house a week before he took his life, maybe a week and a half before he took his life, and we spent an hour—almost 3 hours talking. And Cliff summed it up, he was very angry about the plaintiff's lawyers and they were coming after him. He was very angry about that, because he had spent a lifetime building security for his family.

But he said, "Jeff, the thing that really gets me"—he said, "It is like this." He said it is like it is a beautiful day in Houston, Texas,

and you are out in your front yard, you have got a hose, and it has got a nozzle on it, and you are watering your front lawn. And it is a beautiful day and all of the kids in the neighborhood are out. Your neighbors are out drinking coffee. They are all talking to one another. And it is just a great day.

And then, suddenly the guy that lives next door to you comes crashing out of his front door. He walks up to you and says in a voice loud enough for everyone to hear that "I hear you are a child molester." And then he turns around and he walks back inside his house and closes the door. And Cliff said, you know, from that day forward your life is changed. And he said, "They are calling us child molesters." He says, "That will never wash off."

Mr. GREENWOOD. But, Mr. Skilling, you don't believe that.

Mr. SKILLING. I don't believe what?

Mr. GREENWOOD. You don't believe that the press and everybody calling Cliff Baxter or yourself or anybody on the Board of Directors—denigrating or tainting you, you don't think it is accurate. That is what you are saying here today, that you are standing up here saying everything the press is saying, everything that Sherron Watkins is saying, all of the testimony you have had before you, including the dean of the law school, the University of Texas, all of that is wrong is what you are saying to us here today.

Mr. SKILLING. I will not say that. I have read everything I can read, every press account I can read over the last 4 months, for the specific meetings or representations that the press has made that I was intimately familiar with, where I was there. I would say the press is getting it right maybe one-third of the time, and the other two-thirds of the time they are just totally, totally off base.

Mr. GREENWOOD. And the Special Committee report, that the Board of Directors, that the dean of the law school of the University of Texas, is off base, in your opinion.

Mr. SKILLING. I can only comment on what I know. To the extent that that report in any way says I did something that was not in the interest of the shareholders of Enron Corporation, then, yes, I disagree with those passages in the report vehemently. I did not do anything that was not in the interest, in all of the time that I worked for Enron Corporation, that was in the interest of the shareholders of the company.

Mr. GREENWOOD. Mr. Skilling, I am not an attorney, but you are practicing plausible deniability, which is a term you are using to deny all what people have said. Sherron Watkins said Cliff Baxter complained mightily to you and all who would listen about the inappropriateness of these transactions with LJM. Jeff McMahon did the same thing. You have Cliff Baxter. You have Jeff McMahon.

Mr. SKILLING. I related——

Mr. GREENWOOD. You have Sherron Watkins. There are three people who have said that you were told specifically all about these transactions, the conflict of interest. In fact, Jeff McMahon laid out five steps to you on how he thought that it should be corrected, because of all of the conflict of interest, inherent conflict of interest.

So are you asking me to forget——

Mr. SKILLING. Congressman, you are flat out misreading—misreading——

Mr. GREENWOOD. I am reading right from Sherron Watkins' letter. Cliff Baxter complained mightily to Skilling and all who would listen about the inappropriateness of these transactions. Are you saying Sherron——

Mr. SKILLING. When you give me time——

Mr. GREENWOOD. —Watkins is not telling the truth? Are you telling me that today?

Mr. SKILLING. Will you give me time——

Mr. GREENWOOD. Just yes or no. Is Sherron Watkins telling the truth?

Mr. SKILLING. Can you give me time to specifically go through—this is serious stuff, sir.

Mr. GREENWOOD. It is serious stuff, but I am just asking whether she——

Mr. SKILLING. This is very serious stuff.

Mr. GREENWOOD. [continuing] whether Sherron Watkins' letter is truthful or not.

Mr. SKILLING. The discussion that I had with you about what Cliff Baxter said to me related to a time subsequent to me leaving the company. Did Cliff Baxter raise an issue about LJM? Cliff Baxter raised an issue with me probably in January or February of last year, to my best recollection. Cliff said, "I don't know anything about the transaction," because he would have no basis for knowing about the transaction. But he said he and Andy were not—they had a very strained personal relationship, and he says, "I don't think you ought to be doing anything for Andy Fastow." That was the sum total of our discussion about it.

And then Cliff, I think subsequent to that, was open with people that he did not particularly like any investment vehicle that Andy would have a personal interest in.

Mr. GREENWOOD. So Sherron Watkins, what she is saying here is not truthful?

Mr. SKILLING. If Sherron Watkins says that Cliff complained mightily, as I think she said, to anyone who would listen, I would say that is probably true. If you are asking when Cliff Baxter and I discussed the situation, I have a very clear recollection that Cliff said—and, in fact, I even asked him. It is my recollection I asked him, "Do you think there is anything wrong with the structure in place?" And his answer to me was, "I don't know what the structure in place is."

I said, "Do you have any reason to think that there is anything bad going on?" He said, "No." He said, "I think it looks bad to have a related party transaction." Period. And that was the last discussion that we had about it.

Mr. GREENWOOD. Mr. Skilling, I am going to give you the last word. My time has expired.

Ms. DeGette?

Ms. DEGETTE. Thank you, Mr. Chairman.

Mr. Winokur, you have three degrees from Harvard. You have been Chairman and Chief Executive Officer of an investment firm, Capricorn Holdings, Inc. You have also been the managing general partner of three affiliated limited partnerships. Correct?

Mr. WINOKUR. Congresswoman, yes, that is correct.

Ms. DEGETTE. And so you are familiar with—well, let me ask you this. You are on the Enron Board. You have a fiduciary duty to Enron stockholders/shareholders as a member of that Board, do you not?

Mr. WINOKUR. Yes, ma'am.

Ms. DEGETTE. As do the senior management, like the CEO or COO, correct?

Mr. WINOKUR. Yes.

Ms. DEGETTE. And you also are aware that when you have a potential conflict of interest by a member of the senior management of the Board or of a company like Enron, for example, Mr. Fastow, that is a very serious potential conflict, is it not?

Mr. WINOKUR. Yes, it is.

Ms. DEGETTE. And, in fact, that is why in the Finance Committee which you chair—do you still chair that now, sir?

Mr. WINOKUR. Yes, Congresswoman, I do.

Ms. DEGETTE. Okay. There was lengthy discussion about Mr. Fastow's potential conflict of interest in the LJM funds, correct?

Mr. WINOKUR. Yes.

Ms. DEGETTE. And why the Finance Committee and the Board felt that it was important to put a set of controls in place, so that Mr. Fastow's dual roles would be disclosed—and I assume any other officers or employees of the corporation, correct? Those would be disclosed and——

Mr. WINOKUR. Yes.

Ms. DEGETTE. [continuing] there would be firewalls insured——

Mr. WINOKUR. Yes.

Ms. DEGETTE. [continuing] to make sure that those individuals' fiduciary duties would be preserved, correct?

Mr. WINOKUR. Yes.

Ms. DEGETTE. And that is all laid out in Tab 8. You don't have to look at it, but it is those meetings we have been talking about from October 6, 2000, right?

Mr. WINOKUR. Yes.

Ms. DEGETTE. So you and all of the other Board members were aware of the potential conflict that Mr. Fastow had, correct?

Mr. WINOKUR. Yes.

Ms. DEGETTE. And, Dr. Jaedicke, you also knew of the potential conflict, did you not?

Mr. JAEDICKE. Of Mr. Fastow?

Ms. DEGETTE. Of Mr. Fastow.

Mr. JAEDICKE. In the——

Ms. DEGETTE. Or anyone else who would have an interest in——

Mr. WINOKUR. No, Congresswoman, we didn't—I didn't know of any other person who was conflicted—who is in this conflict person but Mr. Fastow.

Ms. DEGETTE. But what you thought you would do is put controls into place——

Mr. WINOKUR. Yes.

Ms. DEGETTE. [continuing] so if there was anyone like that you would know about it and make sure that the controls were followed, right?

Mr. WINOKUR. That is correct.

Ms. DEGETTE. Because that is your duty as a Board member, isn't it?

Mr. WINOKUR. That is correct.

Ms. DEGETTE. Now, in your testimony today, your written testimony on page 6, you talk about this dash sheet. We have been talking about it at length today, right? That is the sheet that discloses the conflict, and all of these people are supposed to sign off, correct?

Mr. WINOKUR. Congresswoman, the dash sheet, as Mr. Skilling said, applies to all capital investments.

Ms. DEGETTE. Right.

Mr. WINOKUR. There was a separate LJM approval sheet that was put in place—I don't know exactly when—but put in place during this same period of time, which was another not replacement but incremental sheet.

Ms. DEGETTE. But you, as the Chairman of the Finance Committee, never saw those sheets, did you?

Mr. WINOKUR. We saw dash sheets, but never the LJM approval sheets.

Ms. DEGETTE. Did you see——

Mr. WINOKUR. And we didn't see dash sheets that related to the LJM transactions, to the best of my knowledge.

Ms. DEGETTE. Well, did you see the dash sheets that are included in Tab 26 here? Those relate to a variety of LJMs.

Mr. WINOKUR. Congresswoman, we would——

Ms. DEGETTE. Did you see those dash sheets?

Mr. WINOKUR. I have no recollection of having seen these during the time in which they were done. I saw them during the context of the Special Committee report.

Mr. SKILLING. I am sorry. What tab were you talking about?

Ms. DEGETTE. Exhibit 26.

Mr. SKILLING. These are not dash sheets.

Mr. WINOKUR. These are LJM approval sheets.

Ms. DEGETTE. I am sorry, the LJM approval sheets. I am sorry. The LJM approval sheets, have you seen those? Thank you, Mr. Skilling.

Mr. SKILLING. You are welcome.

Mr. WINOKUR. No, I have not. I had not until I—the Special Committee——

Ms. DEGETTE. You didn't see them at the time.

Mr. WINOKUR. No.

Ms. DEGETTE. Okay. But you felt that you didn't need to see those, correct?

Mr. WINOKUR. I didn't feel that the Finance Committee needed to review them——

Ms. DEGETTE. Because you felt, as the Finance Committee, that you would get assurances from the senior management——

Mr. WINOKUR. The senior management——

Ms. DEGETTE. [continuing] that the procedures were being followed, right?

Mr. WINOKUR. Yes, ma'am.

Ms. DEGETTE. What did you do to get that assurance if you didn't look at the paperwork?

Mr. WINOKUR. We had presentations from the Chief Accounting Officer, the Chief Risk Officer, Mr. Skilling present. We had presentations from the Chief Financial Officer, then Mr. Fastow——

Ms. DEGETTE. Were those presentations written presentations?

Mr. WINOKUR. Well, there usually were three or four pages of slides—a slide format or handout.

Ms. DEGETTE. And what did the slides say?

Mr. WINOKUR. Well, I would have to refer to each meeting, but I recall that Mr. Causey told us at one meeting that all of the controls were being followed, and that they were all working effectively.

Ms. DEGETTE. And so you, in your fiduciary duty as a member of the Board, thought that that was enough to ensure that this—that all of the controls were taken care of.

Mr. WINOKUR. Congresswoman, that presentation had other senior officials of the company in attendance who didn't speak up and say otherwise. I also knew that——

Ms. DEGETTE. So by silence, you thought that was assent, correct?

Mr. WINOKUR. I believe that if somebody sitting there hears something that is not true, they should say something, absolutely.

Ms. DEGETTE. And Mr. Skilling never spoke up and said anything?

Mr. WINOKUR. Not to my recollection. I also knew that the Audit Committee would receive additional presentations from similar people, and from Arthur Andersen, about the controls.

Ms. DEGETTE. Okay. Mr. Jaedicke, then——

Mr. JAEDICKE. Yes, ma'am.

Ms. DEGETTE. [continuing] did you get additional presentations?

Mr. JAEDICKE. Our review was from slides or lists showing the transactions, usually categorized by what kind of transactions they are. We did not have the—we did not look at every—whatever they are called, deal approval sheets, the——

Ms. DEGETTE. The LJM approval sheets.

Mr. JAEDICKE. [continuing] the LJM.

Ms. DEGETTE. Well, let me ask you this. Did you ever see a slide that showed that in the LJM Cayman LP, which is the first sheet of Exhibit 26, the persons negotiating for Enron—Joe Defner, Tim Proffitt—persons negotiating for LJM—Michael Kopper, Greg Caudell—did you ever know that?

Mr. JAEDICKE. No, ma'am.

Ms. DEGETTE. Did you know that Michael Kopper was involved in any of these——

Mr. JAEDICKE. No, ma'am.

Ms. DEGETTE. So what, did they just show you some of the slides?

Mr. JAEDICKE. They did not show us the deal approval sheets. We have the control; it says no one is allowed to negotiate for Enron who reports to Mr. Fastow.

Ms. DEGETTE. All right.

Mr. JAEDICKE. And then we have requirements like—they are listed here. The transaction must take place at arms length.

Ms. DEGETTE. But it would be fair to say you told them that, but then you never actually got the information on every deal, correct?

Mr. JAEDICKE. We asked that—yes, we were assured that——
Ms. DEGETTE. You did get the information on every deal?
Mr. JAEDICKE. No, no. I am sorry. I misunderstood you.
Ms. DEGETTE. Okay.
Mr. JAEDICKE. We looked——
Ms. DEGETTE. You told them, have the firewalls in place, but you did not actually have the information on every deal as the Audit Committee did.
Mr. JAEDICKE. Of every deal sheet?
Ms. DEGETTE. Right.
Mr. JAEDICKE. No, ma'am, we did not.
Ms. DEGETTE. Thank you.

I just want to say one final thing, Mr. Chairman. Here is what I think has happened after the last week. I have been listening to all of this, and I think that everybody in the company knew Mr. Fastow had a conflict. I think that there were a whole lot of people paying attention every other place. You have a CEO who is an admitted controls freak. You have a Board that puts controls into place.

In 1999, Mr. Skilling says, "Well, I remember I looked at the controls, but I wasn't involved." In 2000, then, this fellow who says he is a controls freak says, "Well, I don't remember the part that said I was supposed to sign off, because the lights were on and off," which by the way I find ironic for an energy company, but that is a different issue for a different day.

And then you have a Board that says, "Well, we told these guys to put controls in place. We don't really know what happened." To me, it is not so surprising that a ship with captains like this sank and sank big, and I will yield back the balance of my time.

Mr. GREENWOOD. And I thank the gentlelady. The gentleman, Mr. Rush, is recognized.

Mr. RUSH. Thank you, Mr. Chairman.

I want to return to a line of questioning that you engaged in, Mr. Chairman, but I don't want to get into it with the level of intensity that was prevalent in your questioning.

And I just want to ask, Mr. Skilling, when you came here, part of your opening testimony was that you came voluntarily, and I commend you for that. And there are some others who—from Enron who have taken advantage of their Fifth Amendment provisions and they decided not to testify. You have testified voluntarily.

You indicated that the reason, or at least one of the reasons that you came, was because of the tragedy concerning your friend, Mr. Baxter. And we have heard testimony to the fact that he complained mightily to you, and you said that it was subsequent to his resignation from Enron, is that right? Or subsequent—was it subsequent to his resignation?

Mr. SKILLING. No, it probably occurred, I am guessing, in maybe late 2000. So it would have been probably three or 4 months before he left Enron.

Mr. RUSH. When did he leave?
Mr. SKILLING. He left, I believe, in March.
Mr. RUSH. In March of 2001?
Mr. SKILLING. 2001.
Mr. RUSH. And you left in?

Mr. SKILLING. August.

Mr. RUSH. August of 2001. Okay. And Mr. McMahon complained to you, according to the letter to Mr. Lay from Ms. Watkins—Mr. McMahon complained to you mightily also. Is that correct?

Mr. SKILLING. Well, again, characterizations, as I have said, I would not use the term "mightily" with Cliff.

Mr. RUSH. But he complained to you.

Mr. SKILLING. He didn't complain. Cliff brought up the issue. I knew he and Andy had had a degree of animosity that was not insignificant. My discussion with Jeff McMahon was related to what I believe—my perception was a compensation issue, and I recall telling Mr. McMahon that if he did anything to support Enron's shareholders there was no compensation issue, because the name of the game here was to protect our shareholders.

Mr. RUSH. Was there anyone else who complained to you about the LJM transactions?

Mr. SKILLING. I don't recall.

Mr. RUSH. Let me ask you, you are represented by counsel here. You have counsel with you here?

Mr. SKILLING. Yes.

Mr. RUSH. Is there any reason for that?

Mr. SKILLING. I am sorry?

Mr. RUSH. What is the reason for having counsel here with you?

Mr. SKILLING. Well, I am not a lawyer. And I will tell you what, this is one of the most complex set of events I have ever gone through, and I, to be quite frank, am very, very happy to have someone that understands this working with me.

Mr. RUSH. Okay. Mr. Winokur, earlier testimony from Mr. Olson stated that every investment Enron made was unsuccessful, that the international power and water projects, the broadband, and the energy supply contracts, all of these were unsuccessful. And as a result, in Enron's last year before bankruptcy, a billion dollars—well, 70 percent of its earnings came from Raptor.

And the Powers report, on page 24, said that the Finance Committee was on notice that LJM's transactions were contributing very large percentages of Enron's earnings. But the Finance Committee still didn't look at those transactions. Did that surprise you, when you found out about that?

Mr. WINOKUR. Congressman, I was aware that the water business was not performing well, because I was also involved with Azurix. The Board took action with respect to Enron energy services and suggested to management that it be restructured. It was restructured. That was reported in March of 2001 in the 10Q.

I was not aware until the Special Committee report, because we received reports at the Board by division—divisional income before interest and taxes—that showed every division was performing well, and we saw those reports even at the October Board meeting of this year.

The Raptor transaction did not actually come to my attention in the form that it later appeared during the Powers Committee report.

Mr. RUSH. Well, the Special Committee also reported that the LJM made money on every single deal it signed with Enron, even if Enron lost money. Wasn't that kind of strange? Did you find that

strange also as a part of the—as the head of the Finance Committee?

Mr. WINOKUR. Congressman, I didn't know that until the Powers Committee report. But I would say, as someone who deals in investments, I found that very unusual.

Mr. RUSH. Mr. Skilling, did you ever tell Mr. Fastow that he—that the investors would never lose money? Did you tell them that they would never lose money?

Mr. SKILLING. No. As I have said earlier, Andrew Fastow and I had absolutely no understanding of any sort, any nature, that suggested that the partnership would be guaranteed a rate of return.

Mr. RUSH. Thank you, Mr. Chairman. I yield back. I yield back, Mr. Chairman.

Mr. GREENWOOD. I thank the gentleman. The gentleman from Massachusetts, Mr. Markey, is recognized.

Mr. MARKEY. Thank you, Mr. Chairman.

Mr. Winokur, you were on the Powers Committee, and I see that on page 21 of the Powers report, that there is evidence from other employees that Mr. Skilling approved the March 2001 restructuring of Raptor. And you say on page 121 of the report that senior Enron employees told you that Mr. Skilling was aware of the problems with Raptor, and "was intensely interested in its resolution."

Your report says, again, on page 121 that, "We are told that during the first quarter of 2001 Mr. Skilling said that fixing the Raptor's credit capacity problem was one of the company's highest priorities. When the Raptor's restructuring was accomplished, Skilling called one of the accountants who worked on the project to thank him personally. Skilling disputes that account." Can you identify the senior Enron employees, Mr. Winokur, who told you these things?

Mr. WINOKUR. Sir, I believe Dean Powers testified—I have not read his testimony—but I did not attend the interviews of any of those people, and so I would not be in a position to tell you who exactly said what in those interviews.

Mr. MARKEY. Did you find the testimony of those Enron employees credible?

Mr. WINOKUR. I believe that the interviews, as presented to us by our legal counsel, seem credible, but I wasn't there.

Mr. MARKEY. Whose account do you think is accurate, theirs or Mr. Skilling's?

Mr. WINOKUR. Sir, I don't have any basis to speculate, other than to report what we heard from our counsel.

Mr. MARKEY. You were on the Powers Commission, were you not?

Mr. WINOKUR. Yes, sir.

Mr. MARKEY. Yes. Just a continuation, Mr. Winokur, of the obvious attitude that the Board has toward these important matters.

Mr. Skilling, were you involved in approving the March 2001 Raptor restructuring?

Mr. SKILLING. Not to my recollection.

Mr. MARKEY. Did you ever say during the first quarter of 2001 that fixing Raptor's credit capacity problem was one of the company's highest priorities?

Mr. SKILLING. I do not recall saying that.

Mr. MARKEY. Did you ever call one of the accountants working on the Raptor's restructuring to thank him for his role?

Mr. SKILLING. It is very possible that I called accountants. Any time a senior executive in the company thought that someone had gone to extraordinary efforts—for example, missing Christmas dinner or something——

Mr. MARKEY. I am talking about on the Raptor's restructuring. Did you call a senior accountant on the Raptor's restructuring?

Mr. SKILLING. I don't recall, but it would be possible.

Mr. MARKEY. You don't recall. It is possible. Now, by August 14, Sherron Watkins says in her memo that, ''The Raptor entities are technically bankrupt.'' Was she right or wrong?

Mr. SKILLING. I don't know.

Mr. MARKEY. You don't know. The Powers Committee, on page 122 of its report, says that, ''The potential impact of the problem and the chosen solution to Raptor's problems were of considerable consequence to the company in Skilling's first quarter as CEO.'' That is the first quarter of 2001. Do you agree with that statement?

Mr. SKILLING. No, I don't.

Mr. MARKEY. You do not. Do you really expect us to believe that you had little knowledge or involvement in a transaction in March of 2001 that allowed Enron to avoid taking a $500 million pre-tax charge against earnings?

Mr. SKILLING. Congressman, again, I don't know where that number came from. I will tell you that, if you think of the way we operated our business, we had electricity sales obligations on one side, electricity and natural gas—I am sorry, electricity and natural gas sales obligations on one side, electricity sales and natural gas purchase obligations on the other.

The total amount of that on our balance sheet at year end was in excess of $30 billion, if you include all risk—what are called risk management assets, plus accounts receivable related to our core natural gas and electricity market.

Mr. MARKEY. This is, however, Mr. Skilling——

Mr. SKILLING. To suggest——

Mr. MARKEY. I understand that $30 billion is a big corporation. But what I am saying here is we have got $500 million. Much of that is already something that is already in progress over the preceding 10 years. Now we are adding in something new. When you are adding something new on to something that is already there, you don't have to look at the old. You are looking at the new. You are the CEO. It is March of 2001.

Mr. SKILLING. Congressman, that is not the——

Mr. MARKEY. You say——

Mr. SKILLING. That is not the way it works.

Mr. MARKEY. Well, it——

Mr. SKILLING. What happened was prices for natural gas and electricity quadrupled in the last 6 months of the year 2000. So our risk management assets went from a number on the order of $6- or $7 billion up to close to $30 billion. So we had losses on one side of the portfolio of a significant amount, and we had gains on the other side of the portfolio of a significant amount.

That was no different in concept from having gains that we had on stock purchases that high technology companies—had done very well at, and we had hedges on the other side of that. So to suggest that this, in the grand scheme of things, was something that I would have been lying awake at night sweating over is just not the case.

Mr. MARKEY. A $500 million charge, which allowed for the maintenance of a myth that the company was profitable is no small number to be concerned with.

Mr. SKILLING. Our company was profitable. That is no myth.

Mr. MARKEY. Well, the Powers report disputes that.

Mr. SKILLING. The Powers report——

Mr. MARKEY. So doesn't all of the other surrounding evidence that this was a cascade—a corporation cascading downwards rapidly. All of the evidence—of course, you know, people say you live life forward and understand it backwards. But it is quite clear that—from the outside now, it is clear that it was already in a freefall.

Now, you were the CEO at the time, and you are a self-avowed—as you are right here today—a brilliant controls freak CEO. But what you have done today is invoke the Hogan's Heroes Sergeant Schultz defense of "I see nothing; I hear nothing." You were basically in the final 6 months of your tenure as the CEO oblivious to all of the surrounding events which clearly were bringing to your attention the numbers, the circumstances, the concerns, which by August 14 made it quite clear that you weren't leaving because of personal reasons. You were leaving because this corporation was in a state of complete collapse, which had not yet come to the full attention of the public, investors, or employees of this corporation.

Mr. SKILLING. On the date I left the company, on August 14, 2001, I had every reason to believe the company was financially stable. And you can say today that everybody agrees that there was a problem. I challenge that. I challenge that. Let us go ahead and go back and look at the numbers.

Mr. MARKEY. Well, but, Mr. Winokur, where did the $500 million figure in the Powers report come from? Where did it come from?

Mr. WINOKUR. Sir, there were risk management reports provided regularly, I am told, to Mr. Causey and Mr. Buy that showed the Raptor negative position. And the action that was taken was to issue forwards on stock which did not come to the Board's attention, and those transactions apparently were recorded improperly because that led to the part of the $1.2 billion reduction in shareholders' equity that was discussed on October 16, I think.

Mr. MARKEY. Do you stand by the Powers report, Mr. Winokur?

Mr. WINOKUR. Yes, sir, except for the part on the Board which I, in my statement, believe I have taken exception to, because I was not associated with it—with that section.

Mr. MARKEY. I think Mr. Powers did a good job, Mr. Winokur. I think he did the job that the Board should have done, and I think they identified a problem that already existed inside of that company long before. And I think the CEO should have known about it.

Mr. Chairman, I thank you for this great hearing. I think it was a very important public service you provided here today.

Mr. GREENWOOD. Thank you, Mr. Markey.

Mr. MARKEY. Ms. Jackson-Lee, if I might say——

Mr. GREENWOOD. Yes, I understand.

Mr. MARKEY. [continuing] wants to ask a couple of questions in writing for the panel, if that would be permissible.

Mr. GREENWOOD. Under our procedures, only members of our committee can do that. But you may submit any questions——

Mr. MARKEY. If I may submit——

Mr. GREENWOOD. [continuing] on her behalf. You certainly may.

In fact, let me make a couple of announcements as we wrap this hearing up. First of all, let me announce that the committee record will remain open for 30 days, and if either—or any of you wish to submit additional testimony or clarifications for the record, as this was a record under oath, you may wish to do that once you have reviewed your testimony. We certainly welcome any clarifications, additions, or corrections for the record.

We would also invite you to answer written questions as they may be submitted to you. I understand a number of members have suggested, including Mr. Markey, that he has some written questions for you. We would appreciate your response in writing, if possible.

And, third, let me thank you for appearing and testifying. There was—obviously, I know this has not been pleasant or easy for you, any one of you, and I want you to know it is not pleasant or easy for us as well.

I would much prefer our committee busy legislating on some important health care issues and technology issues and energy issues rather than doing this. But we, as Mr. Markey said, are trying to fulfill our national obligation to examine this, understand it, and perhaps help make sure it doesn't happen again to any other company or to any other group of citizens who have been so severely affected by it.

Finally, let me also—before we finish, I understand Mr. Rush wants to ask one additional question. Let me let him do that, and then I want to get something for the good of the committee on the record before we finish as well. Mr. Rush?

Mr. RUSH. If I could just ask—have another minute and a half. I just wanted to ask each one of the panelists—we might not have this opportunity again. I just want to ask, in light of this—the situation that we are confronted with as a Nation and that Enron is confronted with, is there anything that you, with 20/20 hindsight, that if you could do differently to avoid this situation that you would do? And I will start with Mr. Winokur, and I would just ask each one of you to answer that question.

Mr. WINOKUR. Congressman, I have thought extensively about that question since October. I believed in Enron. I never sold a share of stock. I had confidence in the management. I had confidence that we had the best consultants—Arthur Andersen and Vinson & Elkins—available to us. I believed we acted with good business judgment, reasonable business judgment. We understood the risks of the decisions. We set in place lots of controls.

What I am deeply saddened by particularly is that it has become apparent from the Powers Committee report that there were many people inside the company and at Arthur Andersen and Vinson &

Elkins who knew something was not right, and nobody, to the best of my knowledge, came forward to the Board of Directors until August of this year when, frankly, it was very late to do anything about it. And I feel terrible about that.

Mr. RUSH. Knew something was right or knew something was wrong?

Mr. WINOKUR. I am sorry. Knew something was wrong, had intimations that something was wrong, and these are people who had contact in some cases with the Board on a regular basis. In some cases, they had contacts at Arthur Andersen and Vinson & Elkins, and not one person came to the Board and said, "We are uneasy. We are uncomfortable. We think something could be done before it turned out to be too late."

Mr. GREENWOOD. Dr. Jaedicke?

Mr. RUSH. And I would like to just ask, what would you do differently, not what someone else would do differently.

Mr. JAEDICKE. Well, like my colleague, sir, I have thought a lot about it also. And it is hard for me to understand why none of the controls that we put into place, of which there were many, seemed to work. And even without making the judgment of people knew something was wrong and they didn't come forth, it is if they had simply been some indication that there was concern out there. But somehow that just did not surface. We were not made aware of that.

There were a number of memoranda that we read about in the paper, such as the discussion among the Arthur Andersen partners about the risks in Enron, and then 3 or 4 days later we have an Audit Committee and we don't hear word one about any of those concerns. I don't know why.

So like my colleague, I am disappointed that somehow all of the effort we put in and all of the controls we put in place, and all of the assurances that we had that those controls were adequate and were, in fact, working and our policies were being complied with, turned out not to be the case, at least according to the Powers report.

I don't know why. I can only tell you that they didn't. And as an Audit Committee chairman that took pride in the work of the committee, as well as had, as my colleague said, very strong feelings for the company—I believed in it—I, too, did really not sell shares except to exercise some options that were expiring. I accumulated shares, I think, during this year. I cared about this company. I cared about my position on the Board, and I cared about my reputation. And so I, too, have great regrets.

Mr. RUSH. So there isn't anything that you would do differently, in other words? Is there anything—I am trying to find out, is there anything that you—that the three of you would do differently in order to avoid the situation if—you know, if you were confronted with a similar situation in the future?

And, Mr. Skilling, maybe you can answer that. What would you do differently?

Mr. SKILLING. I will echo Mr. Winokur's comments and Mr. Jaedicke's comments. And I guess I would also say that I think we all will have a better picture 2 months from now after we have gotten more of the facts about what really did happen, that there may

be some mechanical things that can be done that could be helpful for the system, mechanical things, systemic issues. But I just don't know at this point that we have the facts of what happened. I wasn't there when it all came unstuck.

Mr. RUSH. Thank you, Mr. Chairman.

Mr. GREENWOOD. I thank my friend. I should add for his purpose, too, that we are going through the same exercise. What could we have done different, in terms of our rules and procedures? We are going to look very hard next week at the accounting standards, and we are going to look hard at the issues of the energy markets, and this whole situation by which these trading organizations were created and operate, examine them to make sure that they are working in the national interest as well.

We have got a lot of work to do there. In that regard, first of all, Mr. Skilling, let me on behalf of the committee express to you our condolences on the loss of your friend Mr. Baxter. I know that it was hard for you to talk about it today. I want you to know we sympathize with him and his family as well. And we extend our condolences to them.

Before we conclude, however, I would like, Mr. Jaedicke and Mr. Winokur, for you to give us, on behalf of the entire committee and our bipartisan investigative staff, some idea about what you know of the shredding that is going on or has gone on at Enron. Can you tell us anything about that shredding, who has authorized it and what does it consist of?

Mr. WINOKUR. Congressman, I know nothing about it, other than what I have seen on television or read in the newspaper.

Mr. GREENWOOD. Dr. Jaedicke?

Mr. JAEDICKE. Sir, the only thing I can tell you is that probably the last notice that was sent out was sent out at least partially at the request of the Audit Committee when we heard and read about the Arthur Andersen matter. The only thing I can tell you is I called a company and asked that another——

Mr. GREENWOOD. Is the company Shredco, Inc.?

Mr. JAEDICKE. No, Enron—I am sorry—and asked that another reminder be sent out. That was even before Enron was——

Mr. GREENWOOD. A reminder not to get rid of documents?

Mr. JAEDICKE. Pardon me?

Mr. GREENWOOD. Was it a reminder not to get rid of documents?

Mr. JAEDICKE. Exactly right, yes. I asked if there had been steps taken to preserve the documents, to preserve any documents. They said yes, there were several e-mails that went out. I think they were e-mails. Several notifications that went out.

I asked them what the date was that they started, and they gave me the date. I am just reporting to you my only knowledge of this.

Mr. GREENWOOD. Yes.

Mr. JAEDICKE. They gave me the date that they had started. I suggested that they send out one more at least.

Mr. GREENWOOD. We received reports, as did I think Americans generally, that shredding was going on in January, that a company called Shredco had been hired to do extensive shredding, and that this was going on in spite of the fact that the FBI, SEC, everybody else is investigating. Can you tell us whether you think that is true?

Mr. JAEDICKE. Sir, I have no knowledge of that at all. I am reporting to you that the only thing I did was to try to get another—or not try to but ask that another notice be sent out. I am not aware——

Mr. GREENWOOD. Well, our investigators will obviously want to examine that issue more thoroughly with you and others with the Board. If you can, obviously, gather information for us, we would certainly appreciate it. One of the things that obviously we cannot tolerate, either with Arthur Andersen or with officials at Enron, is the destruction of documents pertinent to this investigation.

And we intend to be very diligent about finding out what happened there and who might be responsible for it and what might have been destroyed, if anything was destroyed.

Second, while you are all here without subpoena—and I thank you for coming voluntarily and for testifying—the committee obviously reserves the right to continue forward with possible other visits or interviews or perhaps even a request for you to return, if necessary, to come and testify. I can give you the general outline of where we go from here.

Our investigators are still at work trying to uncover what is still yet to be uncovered in terms of documentary evidence as to what occurred and how it occurred and when it occurred and who knew it was going on. We are still trying to learn whether the rules were broken or whether the rules themselves were broken and ought to get fixed.

In that regard, we are holding two hearings next week, one by the Subcommittee on Commerce, Trade, and Consumer Protection, Mr. Cliff Stearns chairs, which will look at the issues of accounting which were seriously challenged in this collapse, and to see whether or not we have some work to do in terms of stiffening those rules or improving the enforcement of those rules.

We will also look at the energy markets. One of the good news stories out of all of this mess is that somehow the energy markets kept working. Electricity and gas kept being delivered at prices consumers could afford, and there was no real rocking or shaking or dislocation of that marketplace in spite of this tremendous collapse. That is a good news story.

We need to understand why that good news happened in spite of all of this massive collapse, and we will take a look at that, because we are still trying to figure out some good electric policy for this country and what makes sense for the future.

And the O&I Committee will be announcing very shortly a series of additional hearings. We intend before the end of February to bring the head of the Arthur Andersen firm before the committee, and to subpoena, if necessary, the appearance of Mr. Ken Lay to give us a view of what might have occurred from the top of the corporation, and to help us understand the final parts of this puzzle.

I have asked all of the subcommittees involved, to work at diligent speed, so that we can as quickly as possible turn the corner and start working on solutions. To that end, let me make a request of you. You have seen this thing from the inside.

If you think you can make some suggestions to us as to how we can make sure that boards of directors are better equipped to handle these kinds of situations, and that information flows more thor-

oughly, more transparently to consumers and investors, so that the system works better and confidence is restored in this marketplace as quickly as possible, we need your help.

We thank you for coming voluntarily today. We appreciate your testimony. And the hearing will stand adjourned, with the notion that we have 30 more days to receive testimony.

The hearing is adjourned.

[Whereupon, at 6:08 p.m., the subcommittee was adjourned.]

[Additional material submitted for the record follows:]

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